

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

CRIMINAL APPEAL NO.323 OF 2013

Satish s/o.Prabhurao Deone,
Age: 32 Years, Occu.: At present Nil,
R/o. Village Borol, Taluka: Deoni,
District: Latur.

[At present the Appellant is in
Harsool Central Prison, Aurangabad,
Taluka and District: Aurangabad] **APPELLANT**
[Orig.accused]

VERSUS

The State of Maharashtra
Through the Police Station, Deoni,
Taluka: Deoni, District: Latur **RESPONDENT**

...
Mr.G.A.Kulkarni, Advocate holding for
Mr.R.S.Deshmukh, Advocate for the Appellant
Ms.S.S.Raut, APP for the Respondent/State

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

Reserved on : 27.07.2017
Pronounced on : 04.08.2017

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

1. This Appeal is filed by the
appellant-accused, challenging the judgment
and order of conviction passed by the
Additional Sessions Judge, Udgir, dated 31st

July, 2013 in Sessions Case No.16 of 2012, thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- [Rs.Five Thousand], in default of payment of fine to suffer R.I.for one year.

2. The prosecution case in nutshell is as under:

Archana, aged about 25 years, was daughter of Balaji Biradar, resident of Winchur, Tal. Bhalki, Dist. Bidar [Karnataka State]. Five years before the last incident, her marriage was performed with Satish s/o. Prabhurao Deone [accused], resident of Borol, Taluka Deoni, District Latur. Since marriage she was residing with accused at village Borol with her father-in-law and mother-in-law. Her two brother-in-law, by name Manohar and Vilas, were residing at Hyderabad. They

were doing tailoring work. Sanjiv @ Sanju the third brother-in-law was residing at Borol, Taluka Deoni, separately from them. Archana gave birth to a son by name Tejas.

3. Accused Satish was addicted to liquor. He had illicit relations with Balikabai, the wife of one shop owner namely Balaji. Accused was running a shop on rent basis, which was belonging to Balaji, the husband of Balika. Balika is close relative of accused and deceased Archana. It is alleged that accused used to beat and abuse Archana, since according to him, she was not doing agricultural work, and also on account of his illicit relations with Balika. Archana used to disclose all these ill-treatment and harassment to her relatives.

4. One month before the last incident, accused under the influence of liquor beat to

Archana and asked her to leave house and go to her parents home. For about one month she was at her parents home. 5-6 days before the incident, accused had taken her at their village Borol.

5. On 25th December, 2011, at about 10.00 p.m. Archana was in her house. Accused came from outside under the influence of liquor. She was asleep. Accused started quarreling with her. Accused beaten her by fist and leg blows. He drove her out from the house and told not to reside in his house. Archana refused to leave house and said that, she will continue to reside in the same house. Thereafter, immediately the accused opened the lid of can containing kerosene, and spread kerosene upon her person, and set her ablaze. Thereafter, accused himself tried to extinguish the fire. Accused went to his brother Sanjiv. He

informed about said incident to his brother. The accused, Sanjiv with Umakant Balure who happens to be friend of Sanjiv and uncle of Archana, went at the place of incident. Umakant Balure inquired with Archana, and she disclosed that accused poured kerosene upon her person and set her ablaze. Sanjiv called a tempo of Sanjay Chafe. By said tempo, they both taken Archana to the Hospital at Deoni. As per advise given by Medical Officer at Deoni, they took her for further treatment to the Government Hospital at Udgir. She was admitted in the Hospital, at Udgir. Sanjiv informed incident to the mother and other relatives of Archana. Her relatives came in the Hospital. Archana made oral dying declaration to her mother, and other relatives and disclosed that at the time of incident, accused poured kerosene upon her person and set her ablaze.

6. During treatment in the Hospital, Police Naik Constable Kendre and Naib Tahsildar visited the said Hospital for the purpose of recording her statement. They went to the place where Archana was kept in the Hospital, in between 9.30 to 11.00 a.m. At that time she was unconscious. Hence they could not record her statement. She regained consciousness at about 12.00 noon. Thereafter, Police Naik Constable Kendre and Naib Tahsildar recorded her statement, wherein Archana disclosed that accused after beating her poured kerosene upon her person and set her ablaze.

7. Crime bearing No.95/2011 under Section 307 of the Indian Penal Code, was registered on the basis of the statement of Archana recorded by Police. The investigation was entrusted with P.I. Laxman Rathod. During treatment, Archana died on 26th December,

2012, at about 8.15 p.m. Inquest panchanam was prepared. The dead body was sent for postmortem examination. Dr.Bodke performed postmortem. During postmortem, he found that Archana had sustained 90 to 95% superficial to deep burns upon her face, neck, stomach, back, upper extremities, lower extremities, over peritoneum, buttocks and all over body except the sole of right and left foot. Viscera was preserved. The Doctor opined that the probable cause of death was shock due to 90 to 95% superficial to deep burns. The Investigating Officer, during investigation, visited the place of incident. The panchnama was prepared in presence of panchas. From the place of incident i.e. the house of accused, half burnt shawl [godhadi] of chocolate and white colour strips, yellow colour 5 litre kerosene empty can, one match box of chawi company having 28 sticks and 9 broken pieces of sky blue colour bangles were

seized. On the same day accused came to be arrested under arrest panchnama. The Investigating Officer inquired with witnesses and reduced their statements into writing. He obtained map of place of incident from the village Development Officer. He obtained postmortem report. Lastly, after completing the investigation, the charge-sheet was submitted on 19th March, 2012, before the Judicial Magistrate First Class, Deoni.

8. The Judicial Magistrate First Class, Deoni, by its order dated 12th April, 2012, committed the case to the Sessions Court, as the offence under Section 302 of the Indian Penal Code is exclusively triable by the Sessions Court. The copies of the charge-sheet were supplied to the accused. Muddemal was sent with list.

9. The prosecution opened their case by

submitting the draft charge. The Sessions Court by going through the record came to the conclusion that there was sufficient material to proceed against the accused, and the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Session. Accordingly, on 21st December, 2012, charge below Exh.18 came to be framed. The contents of charge were read over, and explained to the accused in Marathi. Accused denied the charge. His written statement to that effect is at Exh.19. Accused claimed to be tried.

10. The prosecution so as to prove their case beyond reasonable doubt, in all examined 10 witnesses. After full-fledged trial, the trial Court convicted the appellant for the offence punishable under Section 302 of the IPC. Hence this Appeal filed by the appellant- accused.

11. Heard the learned counsel appearing for the appellant-accused, and the learned APP appearing for the respondent-State. The learned counsel appearing for the appellant submits that the dying declarations are not voluntary and truthful. Archana [deceased] was not conscious and oriented to give dying declarations since she suffered 95% burns. The dying declarations are outcome of tutoring/prompting by the relatives of Archana. The trial Court did not properly appreciate the contention of the appellant that the deceased Archana due to having doubt in her mind that the appellant had illicit relations with one Balika, and due to habit of appellant consuming liquor, she set on fire herself and thereby committed suicide. It is evident from the contents of the agreement between the relatives of the Archana and accused that, the mother of the deceased has accepted Rs.2 lacs from the

appellant. It shows that the mother of Archana and other relatives of deceased Archana were motivated to extract money from the appellant and his other relatives. It is submitted that the Naib Tahsildar in his deposition stated that, when he went to record the statement of Archana at about 11.45 a.m. in the Hospital, she was not conscious, and therefore, he could not record her statement. It is submitted that the time gap between recording of two dying declarations, one by the Police Personnel and another by the Naib Tahsildar is hardly 20 minutes. Therefore, it creates serious doubt in the mind about the truthfulness and voluntariness of the dying declarations of Archana. The appellant tried to extinguish the fire, and in the said attempt, he suffered burn injuries to his hand and face, as it is evident from the medical evidence brought on record. The medical evidence

clearly shows that the death was suicidal and not homicidal. The toe impression of Archana on the dying declaration is not attested, and it creates serious doubt about the claim of the prosecution that Archana was conscious to give such statement. The learned counsel appearing for the appellant invites our attention to the grounds taken in the appeal memo, and also note of arguments, which was placed on record before the trial Court, and also relying upon the judgment of the Supreme Court, in the case of *K.Ramachandra Reddy Vs. Public Prosecutor*¹ submits that, the alleged dying declarations of Archana are not voluntary and truthful, and therefore, the appellant-accused deserves to be acquitted by giving benefit of doubt.

12. On the other hand, learned APP appearing for respondent—State relying upon the evidence of the prosecution witnesses,

¹ 1976 [3] SCC 618

and in particular the witnesses, who were examined to prove the dying declarations, and also findings recorded by the trial Court submits that the prosecution has brought on record sufficient, cogent and credible evidence on record, therefore, the appeal may be dismissed.

13. We have given careful consideration to the submissions of the learned counsel appearing for the appellant, and learned APP appearing for the respondent—State. With their able assistance, we have carefully perused and scrutinized the entire evidence brought on record by the prosecution, and also the defence taken by the appellant. It appears that the prosecution examined the relatives of Archana from the maternal side so as to prove motive for committing the offence of killing Archana by the appellant-accused. It appears that the prosecution

examined PW-1 Dr.Sachin Dasharathrao Bodke, who performed the postmortem. He stated that Archana died due to shock due to 90-95% superficial to deep burns. Accordingly, he prepared the postmortem, and viscera was preserved in two bottles.

14. It appears that Archana made first dying declaration before her maternal uncle namely Umakant Balure-PW-5. He stated in his evidence that he went at the place of incident within half an hour at the instance of the accused. He himself and the brother of accused Sanjiv was shifted Archana initially in the Hospital at Deoni, and thereafter at Udgir. He is the friend of Sanjiv. He is working as a Peon in Yeshwantrao Chavan Vidyalaya, Borol, Taluka Deoni since 1992. He knows the accused Satish. His brother Sanjay is Peon in Yeshwantrao Chavan Vidyalaya, Borol. Accused Satish used to

consume liquor. Accused Satish is from his village. On the date of incident at about 10.00 p.m., he himself and Sanjiv were taking dinner at the house of Sanjay Deone. At that time Satish came towards them and disclosed that he set his wife on fire, and she is burning. Thereafter, he himself and Sanjiv went at the house of accused. They found that the wife of Satish was in fully burnt condition. He inquired with Archana about the incident. She disclosed that Satish came at the house at about 10 p.m. He quarreled with her, thereafter accused Satish poured kerosene upon her and set her on fire by igniting match stick. Sanjiv called tempo of Sanjay Chafe. By the tempo, he himself and Sanjay Deone taken Archana initially in the Hospital at Deoni. Doctor given her primary treatment and advised to shift her at Udgir and then shifted her to the Hospital at Udgir.

15. However, in his cross examination, he stated that the patient was talking when she was admitted in both the Hospitals. She had disclosed history to the Doctors. At about 11.00 to 11.30 p.m. on the same day, they admitted her in the Government Hospital at Udgir. At about 12.00 midnight, the brother, mother and uncles of Archana came at the hospital. Mother and other relatives of Archana were with her in the Hospital to look after her. He was at the Hospital for about two days. He also admitted that deceased Archana was his niece i.e. the cousin sister's daughter.

He deposed that he stated before the police that when accused Satish came towards them, he himself and Sanjay Deone were taking dinner, and accused disclosed them at the house of Sanjay that he set on fire his wife Archana and she was burning. However, he

cannot assign any reason why the said statements made before the police is not appearing in his statement, recorded by the police on 27.12.2011. He stated that the appellant told them at the house of Sanjay that before sometime his wife Archana was burnt. He further stated that near about 25 persons were present near the Archana when she disclosed them about the incident. He further stated that Archana did not disclose them how the fire was ceased. He had no knowledge who extinguished the fire. He stated that it is not true that Archana did not disclose him that her husband-accused poured kerosene upon her person and set her ablaze by igniting match stick. He further stated that he knows about what type of statement was made by Archana to the police. It appears that the trial Court while appreciating the evidence of PW-5 Umakant Balure observed that, though the statement of

Archana to the PW-5 is in the form of extra judicial confession, and same is improved statement, still it has to be considered minutely and cautiously with the other evidence, so as to ascertain whether the said evidence is credible and reliable. The trial Court also observed about evidence given by him, that since he is maternal uncle of Archana, it is quite natural that he inquired deceased Archana about the incident. It is further observed that, it is brought on record by the prosecution through PW-5 Umakant Balure that Archana was talking and not unconscious, and she disclosed about the said incident to the PW-5 Umakant Balure, and also medical history was given by her.

16. There is another oral dying declaration given by Archana to PW-6 Ram Maruti Balure. In his deposition before the Court, he stated that he is maternal uncle of

Archana. Accused Satish was addicted to consume liquor and he was habitual. He used to beat Archana. He used to give understanding to the appellant, however, he did not listen. He further stated that the quarrel used to take place between the appellant and Archana on account of Balika. When he went to the Hospital at Udgir, Archana disclosed him that on the date of incident the accused Satish initially beaten her and thereafter poured kerosene upon her person and set her ablaze.

17. During his cross examination, he stated that Archana was his real niece. There used to be quarrel between accused and Archana as the accused used to remain at the house of Balaji through out a day. There was rumour of illicit relations between the accused and wife of Balaji and on that count there used to be quarrel between him and his

wife Archana. Archana was frustrated due to behaviour of accused of maintaining illicit relations with Balikabai. Therefore she had lost interest in life. He reiterated that accused poured kerosene upon her person and set her ablaze. However, he admitted that he has signed the document in the form of compromise [Exh.39], and it bears his signature. The deed also bears signature of his sister Janabai and her son Vinod. They had executed the deed in favour of accused and others. It also bears signature of Madhav his cousin and Bharat, his brother. On 30.12.2011, a receipt was executed by his sister and her son Vinod in favour of brothers of accused. He is not aware about the contents of the agreement. He stated that it is not true to say that by the said agreement, they took Rs.2 lacs, from the father, mother and brothers of accused for not implicating them in the present crime.

The mother, father and brothers of the accused have no concerned with the alleged offence. He denied that so as to get more amount from the accused, he himself and his brother and sister have falsely implicated the accused by stating that the accused committed murder by pouring kerosene on her person by setting her ablaze. He denied that deceased Archana committed suicide as the accused used to remain at the house of Balaji with Balikabai continuously.

18. It appears that PW-7 Janabai and other witnesses were examined, and they stated in their evidence that the appellant-accused was in habit of consuming liquor. Archana used to tell Janabai that the accused used to beat her frequently. The accused had illicit relations with one Balika, and therefore, he wanted to drive out Archana from his house. However, in her cross examination, she disowned substantial version

from her police statement, and stated that she did not tell before the police that due to illicit relations of accused with Balika, he committed murder of Archana. Importantly, Janabai stated that, she was near Archana when her statement was recorded by the Police and the Executive Magistrate. She herself, her sister and brother were near to her. All of them were near the Archana and were talking with each other. She further admitted in her cross examination that she accepted Rs.2 lacs, however, she stated that the amount, which was taken from her, was returned to her by the accused. However, she stated that she has no any document to show that, earlier they had given Rs.2 lacs to the brother, father and mother of the accused. During her cross examination by the defence counsel, she stated that she had no knowledge whether the accused had sustained burns over his face, hands and palms. She does not know

whether her daughter was fed up with the drinking habit of accused. She was not aware that, whether Archana was fed up with the illicit relations of accused with Balikabai. She was not aware that, whether Archana was fed up with the habit of accused, and she herself poured kerosene upon her person and set her ablaze. She further stated that it is true to say that due to burns Archana was not able to speak properly. She was not speaking fluently. She denied suggestion that so as to extract more amount from the accused, she has lodged the false report.

19. Upon conjoint reading of the evidence of PW-5 Umakant Balure, PW-6 Ram Balure and PW-7 Janabai Patil, it is abundantly clear that the relatives of Archana from the maternal side were continuously present with Archana. PW-5, Umakant Balure, stated in his evidence that,

he took Archana to the Hospital along with Sanjay. If the evidence of these three prosecution witnesses is considered in its entirety, the same is not free from doubt. There is substance in the contention of the learned counsel appearing for the appellant—accused that the oral dying declarations given to PW-3 to PW-7 deserves to be scrutinized more carefully, since PW5 to PW-7 are the relatives and interested witnesses so as to ensure the conviction of the accused.

20. There are two written dying declarations at Exhibits 31 and 33. Before we discuss about the said dying declarations, it would be appropriate to refer to the case papers brought on record by accused during cross examination of PW-1-Dr.Sachin Bodke i.e. Medical Officer. The case paper is at Exh.24. In the said case paper initially at about 00-15 hours on 26.12.2011 the Doctor

had mentioned that the patient was not able to speak clearly, hence exact history from her was not possible. She was again examined at about 00-50 hours. At that time there was chocking of voice. Patient was irritable, not able to speak properly. She was again examined on the same day at about 9.30 a.m. At that time she was found semi conscious state. She was unable to speak properly. Then he was examined at about 12.00 noon on the same day. At that time she was responding to verbal command. She was again examined at 4.00 p.m. on the same day, at that time she was found conscious. She was responding to verbal command. She was again examined at about 7.50 p.m. on the same day. At that time she was not responding to commands. Lastly, she was examined at about 8.15 p.m. At that time it was found that she is no more.

21. Upon careful perusal of the said

case papers, it is abundantly clear that Archana was not conscious through out and till 12.00 noon on 26th December, 2011. The dying declaration at Exh.33 is recorded by the Police. We have carefully perused the contents of the said dying declaration. There is an endorsement of the Medical Officer Dr.S.S.Deshpande, that patient is able to speak at 12.00 noon on 26th December, 2011. Upon careful perusal of the contents of the said dying declarations, Archana stated that the appellant came to the house at about 10.00 p.m. on 25.12.2011. At that time she was asleep. The appellant lifted kerosene can and threw on her person and set her ablaze. She shouted loudly and started running. At that time accused brought shawl and tried to extinguish the fire. Husband used to beat her since she was not going to the agricultural field. Before the said incident, husband assaulted her by stick,

however, mother-in-law intervened and rescued her. Because of the behaviour of the husband, mother-in-law and father-in-law went to the Hyderabad to reside with the elder brother of the appellant.

22. It appears that on the said dying declarations, thumb impression of Archana is shown. In order to prove the said dying declaration, the prosecution examined Sudhakar Baburao Kendre as PW-4. He received information from the PSO of Udgir City Police Station on mobile phone that one Archana Satish Deone admitted in the Hospital by sustaining 90-95% burns and directed him to record her statement. Thereafter, he went to the burn ward no.4 of the Hospital. Doctor Mr.Deshpande were present in the said ward. He told to the Doctor that he was intending to record the statement of patient Archana. Doctor examined her and told that she was not

able to give statement. Thereafter, he returned at the Police Station. He issued letter to the Taluka Executive Magistrate for recording statement of the injured. Again he went in the Hospital at about 1.00 p.m. He asked the Doctor whether the patient was in state of mind to give the statement. Doctor examined the patient and told that she was able to give statement. Accordingly, the Doctor made an endorsement. Thereafter, he recorded statement of Archana. At the time of recording her statement, she disclosed that on 25th December, 2011, as usual she went asleep at about 10.00 p.m. her husband came in the house from outside. Her husband poured kerosene upon her person and set her ablaze. She so as to save herself was moving in the rooms, thereafter her husband extinguished fire, by covering her with shawl. He asked her why she was set on fire. However, she disclosed that she was not going to do

agricultural work. She further disclosed that 3 days prior to the incident, her husband had beaten her. Her mother-in-law and father-in-law had rescued her. He recorded her statement as per her say. He read over it to her. He obtained toe impression of her right leg.

23. During his cross examination, he stated that at about 9.30 a.m. when he went to the Hospital, Archana was not in a condition to speak. At the end of recording of statement of Archana, she stated that she was unable to state any more. At that time she was not in a condition to speak more. It appears that the thumb impression is obtained. Near the thumb impression, he has written as "Nishani Angtha" i.e. thumb impression. He has not specifically mentioned whether it is of toe or hand. He has not mentioned that whether the toe obtained is of the patient or of other person. He has not

mentioned the time, when he started and concluded the statement. He had come into contact with Naib Tahsildar in the Hospital. Therefore, he admitted in his cross examination that he did not mention whether it is of toe or hand. He has also admitted that he has not mentioned the time of recording of such dying declaration.

24. Upon careful perusal of the original dying declaration at Exh.33, the impression of thumb / toe is not attested, it appears that, the recording of the said dying declaration is started at 12.00 noon, however when it was concluded is not mentioned. The another dying declaration was recorded by the PW-3 i.e. Naib Tahsildar. In his deposition he stated that, he went to record the statement of Archana in the burn ward at 11.00 a.m. on 26.12.2011. Upon his request, Dr.Deshpande examined the patient. Upon

examination, he told that patient was not able to give statement. Accordingly, he issued certificate.

PW-3, Govind Yerme, further stated that at about 12.00 noon Police Constable Kendre from the Hospital called him on phone and informed that the patient regained consciousness and requested to come in Hospital to record her statement. He went at the Hospital in burn ward. Dr.Deshpande examined the patient upon his request. He found that the patient was conscious and fit to give statement. Accordingly, he issued certificate on the same paper. All the relatives and police personnel from the ward were asked to go out from the ward. Accordingly, they left the ward. He himself, patient and Doctor were present in the ward. He saw that the patient was moaning. He informed to the patient his name, post and

his intention to record her statement. She consented to record her statement. He asked her name, village, her husband's name and his occupation to the Archana. She stated that her name as Archana and her husband's name as Satish, and also stated that she has one son. He asked her about the occupation of her husband, and she stated as labourer. He stated that he asked her why she was brought in the hospital, she stated that due to burns she was brought in the hospital. When he asked her about the incident, she stated that her husband started beating her by fist and leg blows, and he was telling her that he was not willing to reside with her. But she was intending to reside with him. Thereafter, her husband suddenly poured kerosene upon her person and set her ablaze. She further disclosed that her husband extinguished the fire. He asked whether there used to be quarrel between them, thereupon she replied

that there used to be quarrel on trifle ground. Her husband was saying that she was not going in the agricultural land to do work. On that count three days before the incident, her husband had raised quarrel with her and was beaten. At that time her mother in law pacified the quarrel. He asked her whether any other person was in the house at the time of incident. She replied that her father-in-law and mother-in-law were at Hyderabad. He asked her whether she want to tell any more; she replied in negative. Thereafter, he obtained her thumb impression on her statement. Her fingers of both the hands had sustained burns, therefore, he obtained her toe impression of left leg.

25. During his cross examination, he stated that the certificate of Doctor is in his handwriting. The Doctor's name and post is also written by him. The Doctor made

endorsement before he started recording the statement. The endorsement by Doctor is in English made after he reduced the statement in writing. He does not know why the Doctor has made overwriting in the endorsement. He did not obtain his endorsement on the last page. Some relatives were present in the ward when he went in the ward. Kendre Constable was also in the wards when he went in the ward. He did not ask Constable Kendre whether he had recorded statement of the patient. He stated that the patient has not specifically informed the substance by which her husband set on fire. She has not specifically stated that her husband set her on fire. She was not aware about who had brought her in the hospital. He did not ask her question how and by what means her husband extinguished the fire. He did not ask her whether any other person came at the place of incident, during or after the incident. The patient was not

semi conscious. He cannot firmly say whether she was conscious or semi conscious in medical terminology. Both the thumbs had sustained burns, therefore, it was not possible to obtain thumb impression of either hand. He has not made separate endorsement after the signature of the patient that the statement was written as per the say of the patient and she admitted its contents. He stated that at about 12.30 p.m. he started recording the statement. This is the first dying declaration recorded by him as Naib Tahsildar.

26. Upon reading the contents of the certificate at Exh.30, there is endorsement of the Medical Officer at 11.10 a.m. that it is not possible to record dying declaration due to unconscious state. Upon perusal of the dying declaration at Exh.31 recorded by the PW-3 Naib Tahsilar, it appears that it is

written that patient was able to speak during the period 12.20 to 12.45 p.m. There is signature of the Medical Officer. However, PW-3, Naib Tahsilar, has stated in his evidence that the said endorsement is written in his hand writing. If really the Medical Officer had given endorsement prior to recording of the statement, there was no question of mentioning in the said endorsement that patient was able to speak during the period from 12.20 to 12.45 p.m. The said endorsement appears to have been made by the Naib Tahsildar/Executive Magistrate himself, and thereafter, signature of the Medical Officer appears to have been obtained. As already observed, the dying declaration recorded by the Police Personnel is at Exh.33 wherein the endorsement of the Medical Officer given is at 12.00 noon. It means that the said Police Officer started recording of the dying declaration after

12.00 noon and immediately the Naib Tahsildar started recording of the dying declaration at 12.20 p.m. Therefore, keeping in view the discussion in the foregoing paragraphs, it appears that, PW-5 accompanied Archana in the Hospital on 25th December, 2011, immediately after the incident had happened. Thereafter, relatives i.e. PW-5 to PW-7 and other relatives were continuously present with Archana as it is evident from the evidence of PW-7, that even while recording the statement of Archana by Naib Tahsildar i.e. PW-3 and PW4, the relatives were present. Though it is denied by PW-3. *Secondly*, the medical history shows that the health of Archana was not stable till 11.10 a.m., the Naib Tahsildar went to record her statement, she was not conscious. *Thirdly*, the endorsement given by the Medical Officer at Exh.31 i.e. dying declaration recorded by PW-3 is in the handwriting of the Naib Tahsildar, and if

really such endorsement was given in the beginning of recording of the said dying declaration, there was no question of mentioning about consciousness of Archana in between 12.20 to 12.45 p.m. *Fourthly*, the time gap between recording of two dying declarations at Exhibits 31 and 33 creates serious doubt in the mind about the version of the prosecution witnesses in respect of recording of such dying declaration. *Fifthly*, keeping in view the physical and mental condition of Archana, whether she was conscious and oriented while making toe impression, if at all it is given by her and there is no attestation to the said toe impression, which is obtained on the said dying declaration. The alleged agreement and acceptance of the amount of Rs.2 lacs by the PW-7 Janabai, and also the said agreement is signed by the relatives, also creates suspicion about genuineness of the

prosecution case. On the whole, the prosecution case does not inspire confidence so as to maintain conviction for the offence punishable under Section 302 of the IPC. The evidence brought on record by the prosecution is not cogent and does not inspire confidence. The prosecution has not proved the case beyond reasonable doubt. The three dying declarations and also two dying declarations alleged to have been given by Archana cannot be safely relied upon in view of the discussion in the foregoing paragraphs. It has also come on record that the appellant tried to extinguish the fire, and in the said process he suffered burnt to his hand and mouth, there appears to be serious attempt on his part to extinguish the fire.

27. We find considerable force in the argument of the learned counsel appearing for

the appellant that there was necessity of strict scrutiny and closest circumspection by trial Court before acting upon the dying declarations and the Court must be satisfied about the fit state of mind of the deceased making declaration before relying on the same as held by the Supreme Court in the case of *K.Ramachandra Reddy [cited supra]*.

28. The Supreme Court in the case of *State of Punjab Vs. Parveen Kumar*², 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 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 *Khusal Rao V. State of Bombay*, 1958 SCR 552.

In the case of *Khushal Rao Vs. State of Bombay*³ 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 opportunity of testing the veracity of the statement by cross-examination.

29. In the light of discussion in the foregoing paragraphs, we are of the considered view that, the benefit of doubt deserves to be given in favour of the appellant-accused. Hence, we pass the following order:

ORDER

- i] The Criminal Appeal is allowed.
- ii] The impugned judgment and order dated 31st July, 2013, passed by the Additional Sessions Judge, Udgir in Sessions Case No.16 of 2012,

³ AIR 1958 SC 22 [1]

convicting and sentencing the accused—Satish Prabhurao Deone, for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

iii] The appellant—Satish Prabhurao Deone 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—Satish Prabhurao Deone is in jail, he be set at liberty forthwith, if not required in any other case.

v] The appellant—Satish Prabhurao Deone shall furnish the personal bond of Rs.15,000/- and surety of like amount under Section 437-A of the Criminal Procedure Code before the concerned trial Court at Udgir.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE