

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 66 of 2014

Mr. Fatima C. Fernandes,
W/o Shri Crispino Fernandes,
r/o of House No.St. Agustinowada,
St. Cruz Goa. .. Appellant

V/s

State,
Through Public Prosecutor,
High Court of Bombay at Goa,
Panaji, Goa .. Respondent

Mr. Anoop Gaonkar, Advocate appearing under Legal Aid Scheme
for the appellant.

Mr. M. Amonkar, Additional Public Prosecutor for the respondent.

CORAM :- C. V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

Reserved on :- 4th August, 2017

Pronounced on :- 18th September, 2017

JUDGMENT : (Per C. V. Bhadang, J.)

This is a case, where the appellant, who is a daughter-in-law, is said to have caused the death of her mother-in-law, by setting her ablaze.

2. The brief facts are that the appellant Fatima, is the daughter-in-law of the deceased Angelina Fernandes. According

to the prosecution, on 16/03/2009, at about 13.00 hours at House No.891, St. AgustinoVado, Santa Cruz, the appellant intentionally caused the death of Angelina by setting her on fire after pouring some inflammable liquid. On the basis of a complaint lodged by Angelina, an offence came to be registered with Old Goa Police Station. The Investigating Officer (IO) conducted investigation, in which dying declaration of the deceased was recorded. The IO drew panchanama of the spot of occurrence. The dead body of Agelina was sent for postmortem examination after drawing an inquest panchanama. The IO effected seizure of the clothes and certain articles and after completion of the investigation, filed a chargesheet before the learned Judicial Magistrate, First Class at Mapusa, which was committed to the Court of Sessions at Mapusa and registered as Sessions Case No.23/2009.

3. The learned Sessions Judge framed charge against the appellant for the offence punishable under Section 302 of Indian Penal Code (IPC, for short). The appellant pleaded not guilty to the charge and claimed to be tried. The defence of the appellant is one of total denial and false implication.

4. At the trial, the prosecution examined in all 20 witnesses and produced the record of the investigation. The

statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (Code, for short), in which the appellant gave her written statement in terms of Section 313(5) of the Code, which is at Exh.C-96. The appellant neither entered into witness box nor examined any defence witnesses.

5. The learned Sessions Judge found that the appellant intentionally caused the death of Angelina on account of previous enmity by causing burn injuries to her after pouring kerosene on her person. The learned Sessions Judge answered all the three points framed in the affirmative and proceeded to convict the appellant for the offence punishable under Section 302 of IPC. The appellant has been sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- and in default, to suffer Simple Imprisonment for six months. Feeling aggrieved, the appellant is before this Court.

6. We have heard Shri Gaonkar, the learned Counsel for the appellant and Shri Amonkar, the learned Additional Public Prosecutor for the State. With the assistance of the learned Counsel for the parties, we have gone through the record and the impugned judgment.

7. It is submitted by Shri Gaonkar, the learned Counsel for the appellant that there are conflicting dying declarations of the deceased, which cannot be reconciled and thus, all the dying declarations are liable to be discarded. The learned Counsel has taken us through the evidence in order to point out various discrepancies. It was submitted that the bucket and a bottle, which the appellant had allegedly brought along with some liquid, were found and seized from outside the house. The CFSL report does not show that it contained kerosene. PW19 states that there were two buckets. It is next submitted that one Ajit Amonkar was present when the statement of the deceased was recorded. There were 100 % burns and thus, it was not possible for the deceased to have given any statement. A reference has been made to the evidence of PW19, in order submit that the deceased was not in a position to give her thumb impression. The learned Magistrate has taken impression of the toe. However, it is shown as the left hand thumb impression (LHTI). There was no kerosene detected on the spot or other articles. It is submitted that the pieces of burnt newspaper are also not recovered. The IO has not made an attempt to collect the evidence as to finger prints. The person who had taken the deceased to the hospital, is not examined. On behalf of the appellant, reliance is placed on the decisions of this Court in (i) **State Vs. Vazir Hakki**; 2005 CriLJ 2719, (ii) **Sunil**

Vs. State of Maharashtra; MANU/MH/2502/2015, (iii) ***Khushal Rao Vs. State of Bombay***; AIR 1958 SC 22, (iv) ***Bhagirath Kanade vs. The State of Maharashtra***; 1997 Bom CR (Cri.) 168, (v) ***Nisar Ramzan Sayyed Vs. The State of Maharashtra***; 2012 Bom C R (Cri.) 540, (vi) ***Ratan BH. Rathod Vs. State of Maharashtra***; 2013 ALL M R (CRI) 240, (vii) ***Rameshwar V. Gaikwad Vs. The State of Maharashtra***; 2012 ALL M R (CRI) 445, (viii) ***Sunil and Ors Vs. The State of Maharashtra***; MANU/MH/2502/2015 and ***Hemant Kawadu Chauriwal Vs. The State of Maharashtra***; MANU/MH/0915 /2012, in order to submit that where the dying declarations are discrepant on material aspect, they need to be discarded. It is further submitted that the alleged oral dying declarations made to PW5 and PW6 are improbable and not acceptable. It is submitted that the location of the kitchen, (where the incident is alleged to have happened), is such, that the deceased could have easily escaped. It is submitted that the evidence of the neighbourers namely PW4, PW12 and PW13 show improbability of the incident and the manner in which it is alleged to have happened. The learned Counsel was at pains to point out that this is a case of mere accident as the appellant herself informed about the incident to her husband.

8. It is submitted that the relatives of the deceased were

present at the time when the dying declaration was recorded and as such, the possibility of tutoring cannot be ruled out.

9. On the contrary, it is submitted by Shri Amonkar, the learned Additional Public Prosecutor that the defence of the appellant, as stated in Exh.C-96, is improbable. It is submitted that in any case, the appellant has not disputed her presence in the kitchen at the time of the incident and that is also corroborated by medical report about the burn injuries found on the hand of the appellant. It is submitted that the discrepancies pointed out about the presence and the seizure of the bucket and the bottle from outside, are minor discrepancies, which do not go to the root of the veracity of the prosecution case. It is submitted that there are dying declarations to the Doctor as well as to the Magistrate, which are natural and cogent and the one, inspiring confidence.

10. It is submitted that there is evidence of neighbours, who have seen the appellant and the deceased in the house. At the same time, there is a clear motive established as to the dispute about the distribution of the property. He, therefore, submits that the learned Sessions Judge has rightly found the appellant guilty and no case for interference is made out.

11. We have carefully considered the circumstances and the rival contentions raised and we do not find that any case for interference is made out.

12. The incident is alleged to have happened on 16/03/2009 at about 13.00 hours at the house where the appellant and the deceased Angelina were staying. Angelina died during treatment at GMC, Bambolim on 17/03/2009 at 2.05 hours on account of burn injuries. Dr. Andre Fernandes (PW2) had conducted the autopsy on the dead body of Angelina on 17/03/2009. PW2 has stated that the cause of death was due to shock as a result of extensive flame burns surface injuries to the extent of 98 %. This witness was cross-examined in relation to the ability of a person, who had suffered 98 % burn injuries, to give a statement. PW2 has stated that the burn injuries are normally classified into three degrees and in the present case, he found that the injuries were of first and second degree, namely at some places, there were first degree burns while at others, there were second degree burn injuries. He states that the deceased had sustained 98% of burn injuries and only soles of the feet were spared. He refuted the suggestion that a person sustaining 98% or 100% burn injuries, cannot be mentally sound and alert. He

has stated in categorical terms that such a patient can be mentally sound and alert for a period of 10 to 12 hours even without hydration i.e. IV fluid and if IV fluids are given, the period can extend even to 24 hours. He states that at the time of postmortem examination, the body was "smelling like kerosene". He had collected the sample of the scalp hair for detection of hydrocarbons. It can, thus, be seen that the deceased died out of extensive burn injuries to the extent of 98%. The question is whether it is a homicidal death and if yes, whether it is the appellant, who is the author of the burn injuries sustained by the deceased.

13. The prosecution case is based on in all five dying declarations, out of which two are in writing and three are oral. Out of the two dying declarations, one each is recorded by Rochelle Fernandes, Executive Magistrate (PW1) and other is in the form of the complaint recorded by Somnath Mahajik (PW19), who was then attached as PSI to Old Goa Police Station. PW1 received a requisition for recording the dying declaration of Angelina at around 8.00 p.m. on 16/03/2009, when PW1 was in his office doing election work. He reached GMC at about 9.15 p.m. and waited for the Medical Officer to arrive, who came at 10.10. p.m. Peter Cruz (PW3) is the Medical Officer, who examined

Angelina at around 10.20 p.m. and certified that she was able to give a statement/ dying declaration, which certificate is at Exh.11. PW3 has given vital parameters of the patient, stating that the pulse of the patient was 100 per minute. Respiratory system and the air entry on both sides were clear. Per abdominal examination was soft and non-tender. Bowls sound was present and the patient was conscious and co-operative. The patient was oriented to time, place and person. In the cross-examination, PW3 has stated that he had also put certain questions to Angelina as to what was the time and place and whether she could identify the relations present and she gave rational answers to the questions. He denied the suggestion that a person sustaining 100 % burn injuries cannot talk during first 10 to 12 hours. Coming back to the evidence of PW1, he states that after the Medical Officer certified about the condition of Angelina to give a statement, he recorded her statement, in which the deceased stated thus :

“At about 12.45 to 1.00 p.m., I was in the kitchen along with my daughter-in-law. She had brought acid in a beer bottle. As the same was smelling I told her to remove it. She than took the same and poured it on me from behind. My daughter-in-law just poured acid on me. She than took paper and lit the gas. She lit the paper in the gas fire and than set me alight.”

PW1 also stated that the voice of Angelina was audible

and speech coherent and she could understand what she was saying. He asked the question to Angelina and recorded answers in the same fashion in his handwriting. He states that since the hands of the patient were burnt, he obtained left toe impression on both pages of her statement. Dr. Peter Cruz (PW3) as well as one witness Ajit Amonkar (not examined) signed the statement along with him. It has come in the evidence of this witness that Angelina was questioned in Konkani and she also answered in Konkani and the answers were translated and the statement was recorded in English. He also states that the statement was read over and explained to the deceased, who has admitted the correctness thereof.

14. We have carefully gone through the evidence of PW1 and PW3 and we do not find any reason to discard their evidence. They are independent witnesses and their evidence appears to be consistent and natural and one inspiring confidence. The learned Counsel for the appellant submitted that the impression (which according to PW1 was of the left toe of the deceased) is shown to be as Left Hand Thumb Impression (LHIT). It is true that the endorsement below the impression is shown as LHTI. In our considered view, this will not be sufficient to discard the evidence, which is otherwise convincing and one inspiring confidence. In

any case, we do not find that PW1 was cross-examined on this aspect, (of the toe impression being shown as LHTI) so as to afford an opportunity to explain the same.

15. The next dying declaration is in the form of a complaint recorded by Somnath Mahajik (PW19). It appears that after the incident, in which the deceased had received burn injuries, she was shifted to GMC by some neighbours. Dr. Sarang Kanekar (PW9) examined Angelina on 16/03/2009 at 5.05 p.m. and found that she was oriented to time, place and person. He states that pulse rate was 88 per minute and blood pressure was 110/70 mm mercury, which means that the patient was in a fit condition to give statement. He certified the same, which is at Exh.43. (The said document is shown to have been exhibited with No Objection from defence.)

16. Jitendra Parampaikar (PW10) was posted at GMC, Bambolim as casualty police. He states that on 16/03/2009, the CMO informed him about the burn case in respect of Smt Angelina (MLC No.9/1952) and the appellant Fatima (MLC Case No.9/1953). PW9 sent a wireless to PI, Old Goa Police Station, which is at Exh.46.

17. Somnath Mahajik (PW19) was then attached to Old Goa Police Station, who received the wireless message from casualty police. He was directed by the PI to visit the GMC, Bambolim. PW19 accordingly, went to GMC, Bambolim and gave a letter seeking permission to record a statement of Angelina as well as the appellant, which are letters at Exh.43 and 44. Dr. Sarang Kanekar (PW9) certified that Angelina is fit to give statement. Accordingly, PW19 recorded a complaint at Exh.77 of Angelina in which, Angelina stated thus :

“That on 16/03/2009 my son Crispino as usually gone for his work at Panaji at about 09.00 hrs morning. That my daughter-in-law, her small child and myself at our home only. My self staying separately in same house and I prepared my own food for myself.

That on today I had my lunch and went to wash my plate under the water tap as I found water was not coming from the tap. Then after I took water from the bucket and wash my plate. Further I sat on the chair inside a kitchen room. Then after some time at about 13.00 hrs my daughter-in-law Mrs. Fatima Fernandes came into the kitchen room with one bucket and she kept said bucket near to me. I got some smell from the bucket. When I notice inside the bucket I saw some liquid in the bucket. I got some doubt and I told her to take that bucket away from me, but she did not listen to me and suddenly lift that bucket and thrown

the liquid on my body which was inside the said bucket. Further she immediately brought one piece of paper. She started the gas stove and she lit the paper and thrown on me. As soon as she thrown the burning paper on me I caught I caught a fire. Further I cried for help but nobody come to help me. Then after I ran to my neighbours house from behind door of my house. Then after some of my neighbours shifted me to the hospital for treatment.”

18. On the basis of the said complaint, an offence came to be registered at FIR/Crime No.24/2009 and investigation was started. PW19 has stated that he obtained left hand thumb impression of the deceased on the complaint Exh.77. The learned Counsel for the appellant has strenuously urged that the medical evidence suggested that Angelina had received substantial burn injuries and only the soles of the feet were spared and the evidence of PW1 also suggests that it was not possible for him to obtain the thumb impression and, therefore, he had obtained left toe impression of the deceased and this is contrary to the statement of PW19, when he states that he obtained the left hand thumb impression. We will revert back on this aspect a little later.

19. Let us now consider the three oral dying declarations. Joicy Fernandes (PW5) and Margarette Fernandes (PW6) are

married daughters of the deceased. It has come in their evidence that Crispino, their brother, was married to the appellant on 21/01/2006 and barring some initial period, there were constant bickerings between the appellant and the deceased. The deceased was suspecting the appellant to have stolen her cash and ornaments. She was also complaining about the appellant abusing her. The reason for the dispute appears to be the partition and share in the property owned by the deceased. It is the evidence of these witnesses that initially, the deceased had decided not to give any share to the two daughters, as they were given enough at the time of their marriage. However, on account of subsequent dispute between the appellant and for that matter between Crispino and the deceased, she had decided to give certain share to her two daughters. Be that as it may, this is the motive, according to the prosecution for the appellant to have caused the death of Angelina. What is material at this stage is that on learning about the deceased having sustained burn injuries, PW5 and PW6 visited GMC, Bambolim and had enquired with the deceased as to what had happened. PW5 states that when she asked the deceased Angelina, she told that while she was sitting in the kitchen at around 1.00 p.m., the appellant brought one 'bucket with some liquid', which was smelling foul. Hence, the deceased told the appellant to remove the said bucket and at that time, the

appellant “emptied the same” on her. The appellant then took a newspaper ignited it on the gas burner and threw it on her due to which, she caught fire. The deceased also told PW5 that the appellant received burn injuries on her right hand. Broadly on the similar lines is the evidence of PW6.

20. We have carefully gone through the evidence of these witnesses and we do not find any reason to discard the same. The evidence of PW5 and PW6 is substantially in consonance with the statement as recorded by PW1 and the complaint recorded by PW19 and would corroborate the same.

21. We then have the evidence of Berna Fernandes (PW15) who is a neighbour of the deceased. She states that on 16/03/2009, at around 1.15 p.m., she was in her house when she heard commotion, hence, she came out and went near the house of Angelina. She found that Angelina was inside her house sitting on chair and asking to take her to the Hospital. PW15 states that when she asked Angelina as to what had happened, Angelina told PW15 that her (Angelina's) daughter-in-law i.e. the appellant, set her on fire in the kitchen. PW15 states that she went near the appellant, who was at the back side of the house and the appellant told her that she had suffered burn injuries on her hand. At that

time, some people shifted Angelina to the Hospital. It is true that the statement of this witness was recorded on 21/04/2009. However, PW15 has stated that she was at her village during the period from 16/03/2009 to 21/04/2009. Belated recording of statement of witness can be one of the circumstances, which can be taken into consideration, while appreciating the evidence and deciding on the probative value to be attached to such evidence. Going by the statement alone, it could have been said that the statement is recorded belatedly. However, PW15 has offered explanation (which has come in the cross-examination), in which she states that from the day of the incident till recording of her statement, she was at her village and thus, may not have been available for recording the statement. That apart, the evidence of PW15 on the point of the deceased having named the appellant as having set her on fire in the kitchen, is again in consonance with the evidence and the dying declaration recorded by PW1, the complaint recorded by PW19 and the evidence of PW5 and PW6 and, therefore, we are inclined to place reliance on the evidence of PW15 notwithstanding that her statement was recorded after about one month of the incident.

22. The law regarding appreciation and the probative value to be attached to a dying declaration and as to whether a

conviction can be based on a dying declaration, oral or otherwise, is too well settled to be restated.

23. In **Ashok P. Jadhav** (supra), the Division Bench found that there are two issues with respect to a dying declaration. The first one would be whether the declaration was actually made, which has to be considered on the basis of the evidence of the witness/es, who claim that such declaration was made. There would be a question of accuracy of the record of such declaration, if made or maintained by such witness/es and if the evidence in that regard is satisfactory, the Court would come to a conclusion that the particular statement was indeed made by the deceased. However, that is not the end of the matter. Once the factum of statement being given is established, the next aspect is about the veracity of such a statement and whether it is true. This second aspect would involve the exercise, which the Court is expected to do while appreciating the evidence of any other witnesses. The Division Bench has observed that for ascertaining the truthfulness of the statement of a dying person, the parameters, which are applied to the witnesses while judging the reliability of their evidence must be applied.

24. The Division Bench in para 31 of the judgment has set

out the possible infirmities in a dying declaration, as under :

“31. The possible infirmities in a dying declaration can be one or more of the following:

a) The declarant may not have been mentally fit to make the alleged declaration.

b) The nature of the record made may have considerably detracted from the actual words uttered by the Declarant.

c) The declaration may have been lacking in circumstantial guarantee of its trustworthiness.

d) The declaration may have been the result of suggestion or consultation.”

25. The Supreme Court in the case of ***Khushal Rao*** (supra), in paras 16 and 17 of the judgment has observed thus :

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made ; (3) that it cannot be laid down

as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been 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 footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, 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. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.

If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities, referred to the above or from such other infirmities as may be disclosed in evidence in that case.”

26. There may be cases where there is a singular dying declaration or multiple dying declarations as in the present case. The latter requires the Court not only to assess the individual dying declaration but also to see whether all the dying declarations, taken together, are consistent and reliable or they

are discrepant on material aspect. If such dying declarations are such that they cannot exist together, being totally divergent on material aspect and are destructive of each other, obviously, they cannot be acted upon. There may be a case where the dying declarations are substantially consonant on material aspects, in which case, they would corroborate each other and can form the basis for conviction. As noticed earlier, there is no rule of law or of practice that a dying declaration cannot form the sole basis of conviction unless it is corroborated. Thus, if the Court finds the dying declaration to be cogent, natural and one inspiring confidence, the Court can always act on the same. In a given case, the Court may look for corroboration either direct or circumstantial to satisfy its judicial conscience, which may be a rule of prudence. All these aspects evidently depend upon facts and circumstances of each case. It needs to be stressed that the precedents cited can be looked into for broad principles governing the appreciation of evidence as to dying declarations. However, once this is done, the Court has necessarily to go back to the individual facts of each case and then to decide whether the dying declaration/s inspires/inspire confidence and can be acted upon. As noticed earlier, the dying declaration recorded by PW1, the complaint recorded by PW19 and the oral dying declarations made to PW5, PW6 and PW15 are in consonance with each other. There

are no discrepancies muchless material ones, so as to discard them. It is for this reason that we are unable to accept the contention that the aspect about dying declaration Exh.12 recorded by PW1 is shown to bear the left toe impression and the complaint Exh.77 recorded by PW19 allegedly bears left hand thumb impression of the deceased, is sufficient to discard the said dying declarations.

27. The learned Counsel for the appellant has submitted that in the dying declaration Exh.12 recorded by PW1, the deceased is alleged to have stated that the appellant brought 'acid' in a 'beer bottle', while in the complaint Exh.77 recorded by PW19, she is alleged to have stated that the appellant brought some 'foul smelling liquid' in a 'bucket'. It is also contended that the bucket was recovered from outside of the house and there are no burnt pieces of any newspaper recovered from the spot.

28. It is necessary at this stage to refer to the evidence of William Gonsalves (PW8), who is a spot panch. He states that he was one of the panchas at the time of conducting scene of offence panchama (Exh.41). That is shown to be conducted from 8.40 hours to 10.25 hours on 17/03/2009 i.e. the next day of the incident. PW8 states that they saw one plastic bottle, half filled

with bluish colour liquid, at the back of the house. There was a brassiere in burnt condition, which was stated to be of the deceased. He saw an empty burnt bucket in the kitchen and there was one plastic chair near the burnt bucket in the kitchen. There was no other evidence of burning seen in the kitchen. However, wooden frames of the door of the kitchen were seen burnt. There were grayish colour hair and one pair of Paragone Chappal in burnt condition, found outside the kitchen/ house towards backside. There was a bottle containing bluish colour liquid in the kitchen below the staircase, which are all attached. It can, thus, be seen that there was both bottle and the bucket (the bucket was half burnt and empty) found in the kitchen along with a plastic chair. There were burnt *chappal* and brassiere found outside the kitchen. There is evidence of neighbourers namely Sevrina Gomes (PW12), Joao Oliveira (PW13) that the deceased had come out shouting when she was in flames. The evidence of these witnesses would find corroboration from the recovery of *chappal* and the half burnt brassiere from outside of the house. The learned Counsel for the appellant had urged that the recovery of all these articles from outside the kitchen/ house would make the statement of the deceased suspicious, which we would tend to disagree. This is because, the recovery of the articles from the spot substantially corroborates the statement of the deceased. The recovery of

bucket as well as bottle would also be significant to explain away any discrepancy between the dying declaration Exh.12 recorded by PW1 and the complaint Exh.77.

29. It was next contended that the none of the seized articles were detected with kerosene residue or of carbon residue. In this regard, it would be necessary to look into the evidence of Priyankar Ghosh (PW17), who was working as a Deputy Director, CFSL, Hyderabad. PW17 had conducted chemical analysis of the ten sealed samples received in this case. It is the evidence of PW17 that except Exh.8 (which was the bottle containing approximately 100 ml. light blue colour liquid), none of the other exhibits i.e. Exh.nos.2 to 5 and 9 to 12 were detected with kerosene residues. However, what is significant is that the analysis was conducted on 03/01/2011 when the incident had occurred on 16/03/2009. PW17 has stated that items namely, Exhs.2 to 5 and 9 to 12 could not be detected with kerosene as kerosene evaporates due to burning (page 185 of the compilation). Thus, in our considered view, the fact that kerosene residue was not detected on the exhibits except Exh.8, would not be sufficient to dislodge the evidence in the form of dying declaration, which finds substantial corroboration from the recovery of the articles from the spot of occurrence.

30. In the present case, the evidence of Dr. Sarang Kanekar (PW9) shows that he had examined the appellant on the same day of incident i.e. on 16/03/2009 which shows that the appellant was also admitted in the hospital on account of burn injuries to her hand. In fact, the presence of the appellant in the house on the date and time of the incident, is not disputed. The existence of burn injuries would corroborate the factum of presence.

31. There is also evidence of PW5 and PW6, which goes to show that there were disputes and differences between the appellant and the deceased. The evidence of PW5 and PW6 shows that apart from small bickerings, there was a dispute about the property including the property at Agassaim, which would afford a motive for commission of the offence.

32. A brief reference may be made at this stage to the decisions cited on behalf of the appellant. A reference to the judgment in the case of **Ashok Jadhav** (supra), has already been made. In the case of **Bhagirath Kanade** (supra), there were inconsistencies found between two dying declarations and it was found that the benefit should go to the appellant accused. A

perusal of the judgment would show that in the dying declaration recorded by the Executive Magistrate, the deceased had implicated the appellant while from the evidence of Medical Officer, who examined the deceased, it is seen that the medical history was given about the deceased having sustained injuries accidentally.

33. In the case of **Nisar Ramzan Sayyed** (supra), the deceased had suffered 95% burn injuries. The Division Bench accepted that though the patient, who had suffered 95% burn injuries, in a given case, would be in a position to make the statement, but it would become necessary to examine the case as to whether the patient was conscious and well oriented enough to make the statement. In para 32 of the judgment, it was found that it cannot be definitely ascertained whether the deceased died in the house of the appellant accused or some other place as from the spot panchanama, it was clear that no articles in the house were found burnt, unlike in the present case, which shows that even the door frames were found burnt. The case clearly turned on its own facts.

34. In the case of **Ratan BH. Rathod** (supra), again on facts, it was found that the dying declaration could not be

believed.

35. In the case of **Rameshwar V. Gaikwad** (supra), the Court noted various infirmities in the evidence of Police Head Constable (PW4), Dr. Ubale (PW5) and the Investigating Officer (PW7), which rendered doubtful whether any such declarations were indeed made.

36. In the case of **Hemant Chauriwal** (supra), the contents of dying declarations were found to be contrary to the information received by the police, which was first in point of time and the possibility of a false dying declaration at the instance of the relatives was not ruled out. Location and exact spot of the incident was also not established where the deceased had sustained burn injuries.

37. In the case of **Vazir Hakki**; (supra), the written dying declaration was found to be in conflict with the evidence of oral dying declaration given by the close relatives of the deceased as well as the neighbours and, therefore, no reliance was placed on the written dying declaration (para 17 of the judgment).

38. Lastly, in the case of **Sunil and Ors** (supra), “officially

recorded dying declaration” were found to be not believable and one inspiring confidence as there were material inconsistencies and variance. In such circumstances, the Court refused to rely on the oral dying declarations.

39. We have carefully gone through the impugned judgment passed by the learned Sessions Judge and we do not find that it suffers from any infirmity, so as to require interference. The appeal is without any merit and is, accordingly, dismissed.

PRITHVIRAJ K. CHAVAN,J.
SMA

C. V. BHADANG, J.