

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

CRIMINAL APPEAL NO. 323/2006

Vilas s/o Sukhdeo Thete
Age : 26 yrs, occu.: business
R/o Samta Colony, Majalgaon,
Taluka Majalgaon, District Beed.

Appellant.

Versus

The State of Maharashtra
(Copy to be served on G.P. of
High Court, Bench at Aurangabad).

Respondent.

Mr. R.N. Dhorde, Senior Counsel with
Mr. V.R. Dhorde, Advocate for the appellant.

Mrs. D.S. Jape, A.P.P. for the State/Respondent.
Mr. G.K. Thigale, Advocate to assist the A.P.P.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 24.01.2018.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. This appeal is directed against the judgment and order dated 29.03.2006 passed by Additional Sessions Judge, Majalgaon in Sessions Case No.39/2005, convicting accused No.1 (present appellant) under Sections 302 and 498-A of the Indian Penal Code (For short "I.P.C.").

2. Appellant is the original accused No.1. Respondent is the State of Maharashtra.

3. Facts leading to institution of this appeal are that accused Nos.1 to 7 were charge-sheeted for the offences punishable under Sections 302 and 498-A read with Section 34 of the I.P.C. The facts of the prosecution case, in brief, are that the deceased married with accused No.1 on 22.05.2003. Accused Nos.2 and 3 are the in-laws and accused Nos.4 to 6 are the sister-in-law of the deceased. Accused No.7 is the daughter of paternal aunt of accused No.1. After marriage the deceased cohabited with accused No.1, who resided jointly with accused Nos. 2 to 6 at Santa Colony, Majalgaon. Accused No.1 used to run a jewelery shop in the name and style as "Thatte Jewelers", located near Hanuman temple, Majalgaon. Two months after the marriage, all accused started ill-treatment to the deceased for demand of money from the parents of the deceased. Whenever deceased went to her parental home, she disclosed before her parental relatives the ill-treatment at the hands of accused for demand of money. Initially the parents of deceased paid Rs.1,00,000/- to accused No.1. However, as his greed was not satisfied, again ill-treatment to deceased continued for demand of money. In the month of December 2003, deceased was mercilessly beaten up by accused Nos.1 to 6.

However, neighbours rescued the deceased from the clutches of the accused and took her to her parental home at Majalgaon. On report lodged by deceased to Majalgaon Police Station, Crime No.188/2003 under Section 498-A of I.P.C. came to be registered against the accused persons. Even the accused filed counter criminal case against the parental relatives of the deceased. At last a compromise took place in between both the parties and both cases were disposed of

4. After compromise, the deceased and accused No.1 started cohabitation in a rented premises located in Samtanagar, Majalgaon since February 2005. Accused No.1 doubted the character of his wife (deceased). He also developed illicit relations with his parental cousin sister (accused No.7). At the instigation of accused No.7 again physical and mental harassment of the deceased was started by accused No.1. He also insisted the deceased to reside at the house of her brother Jagannath. Accused Nos.2 to 6 also insisted the deceased for desertion of accused No.1. However, anyhow the deceased continued cohabitation with accused No.1 in the same rented premises.

5. On 17.05.2005 at about 9.00 to 9.30 a.m. accused No.1 picked up quarrel with deceased, hurled abuses and insisted her for

going to her parental home. On refusal by deceased, in the fit of rage, accused No.1 poured kerosene on the body of deceased and by igniting incense stick on cooking gas, he set her ablaze. Accused No.1 bolted away from the spot. By that time, hearing the shouts of deceased, neighbours rushed on the spot and extinguished the fire. Cousin brother of deceased namely Chandrakumar Shendge (PW-4) arrived at spot. Coincidentally brother of deceased namely Jagannath Shendge (PW-2) was at Majalgaon for some work and after knowing about the occurrence, he rushed on the spot and immediately took the deceased to Government Hospital, Majalgaon at about 10.30 a.m. By that time, even accused No.1 lodged report (Exh.57) about the occurrence to Police Station, Majalgaon. P.S.I. Pathan (PW-9) rushed to the Government Hospital, Majalgaon and recorded first dying declaration (Exh. 58) of the deceased.

6. On the basis of the first dying declaration of the deceased, Crime No.112/2005 under Sections 498-A, 307, 504 read with Section 34 of the I.P.C. came to be registered at Majalgaon Police Station. Investigation was handed over to P.S.I. Pathan. Consequently the Executive Magistrate Janardan Jadhav (PW-7) recorded second dying declaration (Exh.52) of the deceased.

7. During the course of investigation spot panchnama (Exh.37) was drawn by Investigating Officer and kerosene can, pieces of fragmented clothes of the deceased, burnt incense stick were seized from the spot.

8. On the same day i.e. on 17.05.2005 at about 1.00 p.m. the deceased was shifted to S.R.T.R. Hospital, Ambejogai for better medical treatment. A.S.I. Lamture (PW-10) who was attached to Police Outpost of S.R.T.R. Hospital, obtained third dying declaration (Exh.63) of the deceased. On 25.05.2005 at about 11.30 p.m. deceased succumbed to her burn injuries.

9. Inquest panchnama (Exh.39) of the dead body was drawn by A.S.I. Lamture (PW-10) and the dead body was referred for postmortem examination. Dr. Sunil (PW-5) performed postmortem examination and submitted postmortem notes (Exh.42). After the death of deceased, Section 307 of I.P.C. was converted into Section 302 of I.P.C. After completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class at Majalgaon against accused Nos.1 to 7.

10. Offence punishable under Section 302 of I.P.C. being exclusively triable by the Court of Sessions, this case was

committed to the Sessions Court, Majalgaon.

11. The then Additional sessions Judge, Majalgaon framed charge (Exh.19) against accused No.1 for the offence punishable under Section 302 of I.P.C. Charge was also framed against accused Nos.2 to 7 for the offence punishable under Section 498-A read with Section 34 of I.P.C. Contents of the charge were read over to the accused. They pleaded not guilty and claimed trial.

12. Prosecution examined total 11 witnesses. No defence witness was examined by the accused. Defence of the accused is of total denial. Accused No.1 contended that at the time of occurrence, he was in the jewelery shop.

13. In the statement recorded under Section 313 of the Code of Criminal Procedure, the appellant contended that on 17.05.2005 on account of preparation of breakfast in the morning there was exchange of words in between him and the deceased and he left the residence for shop. When he learnt about occurrence at his shop. He rushed to Majalgaon Hospital. However, relatives of deceased did not allow him to see her, and therefore, he went to Police Station, Majalgaon and submitted report (Exh.57).

14. Considering the defence of the accused as well as the evidence placed on record by the prosecution in the form of multiple dying declarations of the deceased, the learned trial Court pleased to convict only the appellant / accused No.1 for the offences punishable under Sections 302 and 498-A of the I.P.C. and he was sentenced to suffer imprisonment for life. Therefore, this appeal arise.

15. Heard strenuous arguments of Mr. Dhorde, learned Counsel for the appellant and learned A.P.P. for the State. With the help of learned Counsels for both the parties, we have gone through oral and documentary evidence placed on record.

16. Learned Counsel for the appellant submitted that after careful examination of three dying declarations i.e. first recorded by P.S.I. Pathan (PW-9) at Exh.58, second recorded by Executive Magistrate Janardan Jadhav (PW-7) at Exh.52 at Majalgaon Hospital and third dying declaration (Exh.63) recorded by A.S.I. Lamture (PW-10) at S.R.T.R. Hospital, Ambejogai, it emerges that these three dying declarations reflect conflicting three versions regarding the actual occurrence of the incident.

17. The next submission of the learned Counsel for the

appellant is that no witness is examined by the prosecution who had seen the appellant while leaving the spot of incident immediately after the occurrence. Neither the clothes of the deceased were sent to Chemical Analyzer, to prove that residues of the kerosene alleged to be poured by the appellant on the body of deceased, are detected in the clothes of the deceased nor in the spot panchnama any signs of kerosene on the spot are visible. According to learned defence Counsel, therefore, the theory of prosecution regarding setting ablaze the deceased after pouring kerosene by the appellant, is not corroborated by any circumstantial evidence. The learned defence Counsel claimed that when three conflicting dying declarations are not corroborated by circumstantial evidence, then conviction cannot be based on such suspicious dying declarations. He has placed reliance on the judgments in the cases of **“Vallabhaneni Venkateshwara Rao Vs State of Andhra Pradesh”** reported in (2009) 6 Supreme Court Cases 484, **“Sharda Vs. State of Rajsthan”** reported in (2010) 2 Supreme Court Cases 85, **“Amol Singh Vs. State of Madhya Pradesh”** reported in (2008) 5 Supreme Court Cases 468, **“Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P.”** reported in AIR 2008 Supreme Court 19, **“Samadhan Dhudaka Koli Vs. State of Maharashtra”** reported in 2009 ALL MR (Cri.) 229 (S.C.) and **“Gopal Vs. State of Madhya Pradesh”** reported in (2009) 12 Supreme Court Cases 600.

18. Learned A.P.P. for the State, in reply, supported the judgment of conviction passed by the learned trial Court on the ground that the dying declarations recorded by three different officers are free from material infirmities. She points out that at the time of recording of these all dying declarations, the Medical Officer was present, who certified that the deceased was in fit condition to give statement. She also points out that the incident occurred at about 9.50 to 10.00 a.m. and first dying declaration is recorded at about 12 noon hours i.e. within two hours after the occurrence, and therefore, when there are no material inconsistencies in three dying declarations, the conviction can be based without seeking for other corroboration. Learned A.P.P. placed reliance on the judgment in the case of “**Anjanappa Vs. State of Karnataka**” reported in **(2014) 2 Supreme Court Cases 776**.

19. Accused Nos.2 to 7 though charged for commission of offence punishable under Section 498-A read with Section 34 of I.P.C., they are acquitted by the trial Court. Against the order of that acquittal no appeal is preferred by the State. Therefore the evidence placed on record against accused Nos.2 to 7 needs no consideration.

20. So far as the appellant is concerned, the main

allegation leveled against him is that he harassed and subjected the deceased to ill-treatment on account of demand of Rs. 2,00,000/-. According to prosecution, out of these Rs. 2,00,000/-, an amount of Rs. 1,00,000/- was already paid by the brothers of deceased and even thereafter for the remaining Rs. 1,00,000/- the deceased was subjected to ill-treatment by all accused persons. In the year 2003 on the report lodged by deceased, offence was registered against accused persons under Section 498-A of I.P.C. and charge-sheet was filed against them in Majalgaon Court. On 11.12.2003 counter F.I.R. was filed by appellant and Crime No.148/2003 was registered against the brothers of deceased and R.C.C. No.2/2004 was registered against the paternal family members of the deceased. In the month of December 2003 the deceased left her matrimonial house and stayed at her parental home. Later on the matrimonial dispute in between the appellant and deceased was compromised on 10.10.2004 and it was decided that the appellant and his wife (deceased) would stay separate from the family and 4 Acres land would be transferred in the name of the deceased. Accordingly appellant transferred 4 Acres land in the name of deceased and mutation entry No.315 was effected. Since February 2004 appellant and deceased resided separately in a rented room at Samtanagar, Majalgaon. After some time they shifted to another room at Samtanagar near Datt temple in the house of Shri Chavan. At this

place the alleged incident dated 17.05.2005 occurred resulting into the death of deceased. Thus, the evidence placed on record by the prosecution regarding harassment and ill-treatment to deceased prior to the date of compromise i.e. prior to 10.10.2004 needs no consideration as the criminal case filed in the Court under Section 498-A of I.P.C. on the basis of those past events, is already disposed of by the Competent Criminal Court. We have to consider only the evidence placed on record regarding occurrence at second rented premises in the house of landlord Shri Chavan in the year 2005.

21. To substantiate the charges against the accused, prosecution examined total 11 witnesses. Jagannath Shendge (PW-2) and Chandrakumar Shendge (PW-4) are the two brothers of the deceased who rushed on the spot immediately after the occurrence and shifted the deceased to Rural Health Centre, Majalgaon. It is to be noted that Jagannath Shendge (PW-2) in his evidence nowhere deposed regarding ill-treatment at the hands of the appellant to the deceased when she resided separate in the rented room, in the premises owned by Prakash Chavan. Only Chandrakumar Shendge (PW-4) who is the resident of Majalgaon and whose house is at the distance of 100 ft. from the rented room of the appellant and deceased, deposed before the Court that after settlement when

the deceased and appellant resided at Samtanagar, he frequently visited the residence of deceased and at one or two occasions deceased informed him that her husband maltreated her physically and mentally by insisting her to reside at the house of her brother. According to this witness, accused No.7 Shardabai used to instigate the appellant to harass the deceased. However, this witness has nowhere whispered a word regarding ill-treatment to deceased by the appellant on account of demand of any valuable article or money. Even his allegations regarding maltreatment at the hands of the appellant are absolutely vague and he has nowhere made it clear as to in what manner the deceased was physically and mentally harassed by the appellant. Thus, the evidence of both these witnesses falls short to prove the guilt of the appellant for the offence punishable under Section 498-A of I.P.C.

22. In the circumstances, except multiple dying declarations of the deceased, there remained no evidence on record to prove the occurrence of incident dated 17.05.2005. The fate of this case totally revolves around the point whether these three dying declarations of the deceased are free from all infirmities to base the conviction without corroboration. Before proceeding to examine the reliability of these three dying declarations, we must point out that though much reliance has been placed by learned A.P.P. on the

history of the patient recorded by Dr. Suryakant Sable (PW-6) in the M.L.C. Register (Exh.46), on careful scrutiny of this history of the occurrence recorded in M.L.C. Register (Exh.46), it emerges that below this history of occurrence, which is in fact recorded in the form of oral dying declaration of the deceased, signatures of four relatives of the deceased are obtained by doctor. Out of these four signatories, two persons are Chandrakumar and Jagannath, who are the brothers of deceased. This material on record itself indicates that this history of the occurrence was recorded by Dr. Suryakant Sable (PW-6) under the pressure of these relatives of the deceased. Therefore, when this oral dying declaration of deceased obviously appears to be obtained under the influence of the relatives of deceased, no importance can be attached to the statement of deceased recorded in the form of history of occurrence in M.L.C. Register (Exh.46).

23. For the same reason statement of Dr. Suryakant Sable (PW-6) that when the deceased was brought to Rural Hospital, Majalgaon, that time her clothes and the body was reeking with kerosene, is not worth believable, in absence of examination of these clothes by Chemical Analyzer. So also, Dr. Satish Gireboinwad (PW-11) in his evidence has proved the note taken by him in the case paper of the deceased at S.R.T.R. Hospital,

Ambejogai that the burns sustained by deceased were homicidal burns. After careful examination of this note (Exh.69), which is recorded in the form of history, it emerges that the said information was given to Doctor by injured as well as by her relatives. In the heading of the note, it is mentioned as "H/o – herself and relatives". Therefore, the information furnished by the deceased and her relatives to Dr. Satish (PW-11) cannot be considered as voluntary statement of the deceased regarding cause or nature of burn injuries sustained by deceased.

24. Now we proceed to examine the reliability of the remaining three dying declarations relied by learned A.P.P. The first dying declaration is recorded by P.S.I. Pathan (PW-9). From his evidence it emerges that on 17.05.2005 accused No.1 Vilas (present appellant) filed report (Exh.57) to Police Station, Majalgaon about occurrence and informed the police regarding burns sustained by his wife Ayodhya. P.S.I. Pathan (PW-9) rushed to Government Hospital, Majalgaon and Dr. Sable (PW-6) certified that the deceased was in a condition to give statement and thereafter he recorded first dying declaration (Exh.58) of the deceased. Even the Executive Magistrate Janardan Jadhav (PW-7) and A.S.I. Lamture (PW-10) have categorically deposed before the Court that before recording dying declaration the concerned Medical Officer certified

that the deceased was in a condition to give statement and only thereafter they recorded the respective dying declarations of deceased as per her say. After going through the evidence of these three officers, who recorded three dying declarations of the deceased and the evidence of Dr. Sable (PW-6) and Dr. Satish Gireboinwad (PW-11), who certified that the deceased was in fit condition to give statement, we are satisfied that the prosecution has proved that these three dying declarations were recorded by these three officers when the deceased was in a fit condition to give statement.

25. We do not notice any illegality or irregularity committed by these three officers while recording the respective dying declarations of the deceased. Even the learned Counsel for the appellant could not point out any illegality committed by these officers while recording dying declarations of the deceased. However, on this count alone the Court cannot jump to the conclusion that these three dying declarations are free from every infirmity.

26. Heavy burden lies on prosecution to prove that these three dying declarations are true and voluntary statement of the deceased. In the background of past matrimonial dispute and filing

of counter criminal cases, the prosecution has to rule out every possibility of tutoring to the deceased by her near relatives. As per the prosecution case itself, after the occurrence when the deceased shouted, her neighbours rushed on the spot and extinguished the fire. To prove this part of the occurrence, the prosecution has examined Shivkanya Chavan (PW-3) who is the landlady of the deceased and appellant. From the testimony of Shivkanya Chavan (PW-3) it emerges that on the date of occurrence at about 9.30 a.m. after hearing shouts of deceased, this witness rushed to the room of deceased which was found closed, and therefore, this witness pushed and opened it. When this witness saw the deceased on fire, she raised alarm and her neighbours Jayashri and Gondebai rushed on the spot and all of them extinguished fire by pouring water on the body of deceased. This witness has made clear that the cooking gas of the deceased was 'on' and this witness switched off the cooking gas. Thereafter the brothers of deceased rushed on the spot and they shifted the deceased to the hospital.

27. It is to be noted that from the testimony of Shivkanya (PW-3) it emerges that her house is abutting to the room occupied by deceased. Even spot panchnama (Exh.37) and the map which is part of the spot panchnama shows that two more rooms of two different tenants are just adjoining to the room occupied by the

deceased. However, neither Shivkanya (PW-3) nor any other neighbour have deposed before the Court that on the date of the incident they heard sound of quarrel between the appellant and deceased at about 9.00 to 9.30 a.m. Even from the testimony of Shivkanya (PW-3) it emerges that after extinguishing fire deceased did not make any complaint against the appellant before this witness who was immediately available to the deceased after the occurrence. In natural course the deceased would have definitely disclosed the occurrence to Shivkanya (PW-3), who was her landlady and immediate neighbour.

28. On the other hand, the first dying declaration (Exh.58) recorded by P.S.I. Pathan (PW-9) recites that in her dying declaration deceased stated all the details since the date of her marriage in the month of 2003 and every details of maltreatment given by all accused persons till the compromise of counter case in the Court. In the dying declaration (Exh.58) the deceased brought on record altogether new theory regarding doubt expressed by appellant about the character of deceased and beating to deceased by doubting her character and thereafter pouring of kerosene and setting her ablaze. Thus, the total silence on the part of Shivkanya (PW-3) regarding hearing sound of quarrel or beating to the deceased at the hands of the appellant, creates doubt regarding

trueness of the contents of first dying declaration (Exh.58) which runs into total four pages and which includes all the details since the marriage of the deceased with the appellant. It is extremely hard to believe that when the deceased was under agony of burn injuries, she would disclose all such details before the police officers since the month of marriage in the year 2003 till the date of occurrence in the month of May 2005.

29. As the deceased was brought to the hospital by her two brothers, she was all along in the company of her two brothers. P.S.I. Pathan (PW-9) has also admitted the presence of 10 to 12 persons near the deceased when he reached near her for recording dying declaration. As observed above, at the time of admission in the Rural Hospital, Majalgaon, the Medical Officer Dr. Sable (PW-6) recorded history of the patient in the form of statement of the deceased with all details of the occurrence. As observed above, that history was signed by the brothers and relatives of the deceased. It means that the relatives of the deceased including two brothers were taking active part in the recording of statement of deceased. Thus, all along the presence of the brothers and other relatives of the deceased with her till her recording of dying declaration creates probability of tutoring to the deceased, and therefore, even the first dying declaration (Exh.58) of the deceased

cannot be treated as true and voluntary statement of the deceased, which is also not corroborated by the testimony of Shivkanya (PW-3).

30. Even from the statement of Executive Magistrate Janardan Jadhav (PW-7), it emerges that before recording dying declaration of the deceased, he removed all the relatives of the deceased from the ward. It means that till that time the deceased was in the company of her relatives. Even from the testimony of Dr. Satish (PW-11) it emerges that there were 4 to 5 relatives, who accompanied the deceased when she was brought to S.R.T.R. Hospital, Ambejogai. Even the case paper of deceased (Exh.69) shows that the deceased was brought to S.R.T.R. Hospital by her brother Jagannath (PW-2). As already noted above, the history of the injuries was given by deceased and her relatives. This material on record creates every probability that even the second dying declaration recorded by Executive Magistrate (Exh.52) and third dying declaration (Exh.63) recorded by A.S.I. Lamture (PW-10) are tainted due to possibility of tutoring by brothers and other parental relatives of the deceased. When the prosecution cannot rule out the possibility of tutoring to the deceased by her brothers and relatives before recording her dying declarations, these three dying declarations cannot be relied upon as true and voluntary statement

of the deceased.

31. Another important aspect is that in the first dying declaration (Exh.58) the deceased stated that on the date of incident, her husband, by doubting her character, assaulted her and thereafter poured kerosene on her body from the can and set her ablaze. In this statement she did not make it clear by which article she was set ablaze. However, in the second dying declaration (Exh.52) , which is recorded at 1.13 p.m., the deceased has placed on record a different theory that on the date of incident the appellant asked the deceased to reside at the house of her brother and on her refusal appellant threatened to kill her and thereafter poured kerosene on her body and by igniting incense stick on cooking gas, appellant set her ablaze. It is to be noted that in this second dying declaration the deceased nowhere stated that accused doubted her character and assaulted her before pouring kerosene on her body. On the other hand, in this dying declaration (Exh.52), deceased made allegations that her husband had illicit relations with accused No.7 Sharda. The climax is that in the third dying declaration (Exh.63) which is recorded on 17.05.2005 at S.R.T.R. Hospital, ambajogai at 6.00 to 6.30 p.m., the deceased brought on record third theory that on 17.05.2005 at about 9.30 a.m. there was trifling quarrel in between her and the appellant, and appellant asked her to

go to her paternal home as he did not like her. Thereafter the appellant poured kerosene on her body and set her ablaze with the help of match stick (काडी लावून पेटवून दिले). In the third dying declaration (Exh.63) the deceased clearly stated that her neighbour Shivkanya Chavan (PW-3) and other persons poured water on her person and extinguished the fire. In other two dying declarations (Exh.52 and Exh.58) she could not name the neighbours who extinguished fire. On the other hand, in the second dying declaration (Exh.52), she clearly stated that, she could not identify her neighbours who extinguished her fire. In the third dying declaration (Exh.63), the deceased nowhere disclosed the assault to her by the appellant by doubting her character before pouring kerosene on her body. Thus, obviously in these three dying declarations the deceased has brought on record three different theories about the actual occurrence of the incident.

32. In the cases of **Vallabhaneni Venkateshwara Rao Vs State of Andhra Pradesh** (cited supra) **Sharda Vs. State of Rajsthan** (cited supra) **Amol Singh Vs. State of Madhya Pradesh** (cited supra), **Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P.** (cited supra) **AIR 2008 Supreme Court 19, Samadhan Dhudaka Koli Vs. State of Maharashtra** (cited supra) **Gopal Vs. State of Madhya Pradesh** (cited supra) the Apex Court

settled the principles of law that when there are multiple dying declarations which are in conflict with each other on material particulars, the conviction cannot be based on the basis of such dying declarations without corroboration by other evidence. Taking into consideration this trite law, when none of the neighbour of appellant and deceased including Shivkanya (PW-3), who rushed on the spot after hearing shouts of the deceased, deposed that appellant was noticed while hurriedly leaving the spot of the occurrence, the appellant cannot be connected with the unnatural death of deceased only on the basis of such dying declarations. Even by submitting report (Exh.57) to Police Station the appellant has brought on record that on the date of the incident he left his residence at about 9.00 to 9.30 a.m. and thereafter he was present in his shop till he received the news of sustaining burns by his wife.

33. In the circumstances, when these three dying declarations of the deceased are not free from doubt and when no corroboration has been placed on record by the prosecution by examining any witness who had seen the appellant in the room occupied by deceased at the time of occurrence, only on the basis of these doubtful dying declarations, the appellant cannot be convicted either for the offence punishable under Section 302 or for the offence punishable under Section 498-A of I.P.C. The case

“Anjanappa Vs. State of Karnataka” (cited supra) relied on by A.P.P. Is distinguishable on facts because in that case, the dying declarations were consistent and worth believable.

34. We hold that benefit of doubt goes in favour of the appellant. Accordingly we pass the following order.

ORDER

1. Criminal Appeal No. 326 of 2006 is allowed.
2. The judgment and order dated 29.03.2006 passed by Additional Sessions Judge, Majalgaon in Sessions Case No.39/2005 convicting the appellant for the offences punishable under Sections 302 and 498-A of Indian Penal Code is set aside.
3. Appellant/accused No.1 Vilas Sukhdeo Thete is acquitted of the offences punishable under Sections 302 and 498-A of the Indian Penal Code.
4. His bail bonds and surety bonds shall stand cancelled.
5. The fine amount deposited by appellant before the trial Court be refunded to him after appeal period is over.
6. Under Section 437-A of the Code of Criminal Procedure, the appellant Vilas Sukhdeo Thete shall furnish before the trial Court the bail bonds with surety for the amount of Rs. 15,000/- (Rupees Fifteen Thousands) to appear before the Supreme

Court as and when notice is issued to him in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

vdd/