

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

CRIMINAL APPEAL NO.7 OF 2003

- 1) Nanasaheb s/o Ganpat Nehul
Age: 25 Yrs., occu. Service,
R/o Javkhede Dumala,
Tq. Pathardi, Dist. Ahmednagar (abated)
- 2) Indubai w/o Ganpat Nehul
Age: 56 Yrs., occu. Household
R/o Javkhede Dumala,
Tq. Pathardi, Dist. Ahmednagar = **APPELLANTS**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.R.K.Temkar, Advocate h/for Mr.G.B.Rajale,
Advocate for Appellants;

Mr. SJ Salgare, APP for Respondent-State.

**CORAM : SUNIL P.DESHMUKH &
P.R.BORA, JJ.**

DATE OF RESERVING JUDGMENT :15th February, 2018

DATE OF PRONOUNCING JUDGMENT:25th April,2018

JUDGMENT (PER:- P.R.BORA,J.)

1) Original accused No.1 and 3 in Sessions
Case No.175/2000 decided by the Court of 3rd
Additional Sessions Judge, at Ahmednagar on
29.11.2002, had preferred present appeal

challenging the order of conviction and sentence passed against them in the said Sessions case. Vide the impugned judgment and order, appellant No.1 was convicted for the offences punishable under Section 498A and 323 of Indian Penal Code whereas appellant No.2 was convicted for the offences punishable under Sections 302, 498A and 323 of IPC.

2) During pendency of the present appeal, appellant No.1 viz. Nanasaheb Ganpat Nehul expired and the appeal thus stood abated against him. Appellant No.2 has prosecuted the appeal further. Appellant No.2 is hereinafter referred to as accused No.3.

3) It was the case of prosecution that accused No.3 poured kerosene on person of deceased Sangita, on 29.8.2000 at about 4.30 p.m. at her house and set her on fire. Deceased Sangita received extensive burn injuries. She was immediately removed to the hospital, but could

not survive and succumbed to the burn injuries after about four days of the alleged occurrence. While in Civil Hospital at Ahmednagar, her statement was recorded by Mohan Natha Pawar, who was then working as A.S.I. at Police station, Pathardi. On the basis of the statement so given by deceased Sangita, crime No.179/2000 was registered against four persons for the offences punishable under Sections 307, 498A, 323, 504, 506 of IPC and investigation was set in motion. Offence was registered against husband, brother-in-law, mother-in-law and wife of brother-in-law of deceased Sangita.

4) After death of deceased Sangita, offence registered under Section 307 of IPC was converted into an offence under Section 302 of IPC. While in civil hospital at Ahmednagar, dying declaration of deceased Sangita was recorded by the Special Executive Magistrate (PW 4). Investigating Officer, during the course of investigation visited the spot of occurrence and

prepared spot panchanama. After death of deceased Sangita, inquest panchanama was prepared and post mortem examination was got done. The Investigating Officer recorded statements of necessary witnesses and also collected the necessary reports. After completing the investigation in the matter, charge sheet was filed against four accused persons in the court of JMFC at Pathardi for the offences punishable under Sections 302, 498A read 34 of IPC and under Section 323, 504, 506 of IPC. Since the offence under Section 302 of IPC was exclusively trial by the Court of Sessions, the learned JMFC at Pathardi committed the case to the Sessions Court at Ahmednagar. After committal, the learned Ad hoc Additional Sessions Judge framed the charge against the accused. None of the accused pleaded guilty and, therefore, trial was proceeded further against them.

5) In order to prove guilt of the accused, the prosecution examined six witnesses. The

defense of the accused persons was of total denial. One Vishwas Madhavrao Nehul was examined as the defence witness by the accused. The learned Additional Sessions Judge, on the basis of evidence brought before him, convicted accused No.3, viz. Indubai Ganpat Nehul for the offences punishable under Sections 302, 498A and 323 of IPC and sentenced her to suffer rigorous imprisonment for life. Accused No. 1 was convicted for the offence punishable under Section 498A and 323 of IPC. Original accused Nos. 2 and 4 were acquitted of all the charges levelled against them. The convicted accused preferred the present appeal taking exception to the judgment and order of conviction. As noted above, since accused No.1 died during pendency of the appeal, the appeal stood abated against him and only accused No. 3 has prosecuted the appeal further.

6) Learned Counsel appearing for accused No.3 assailed the impugned judgment on various

grounds. Learned Counsel submitted that the learned Trial Judge has given undue weightage to the dying declarations of deceased Sangita and has based the conviction of accused no.3 mainly relying upon the so called dying declarations of deceased Sangita. Learned Counsel further submitted that none of the dying declarations is free from doubt so as to place implicit reliance upon it. The learned Counsel submitted that the medical evidence on record demonstrates that deceased Sangita had received extensive burn injuries to the extent of 99%. The learned Counsel further submitted that having regard to the nature and percentage of burn injuries caused to deceased Sangita, it appears improbable and unbelievable that any statement or dying declaration might have been given by her either to the Executive Magistrate or to the police person.

7) The learned Counsel further submitted that there are several infirmities in the

evidence brought on record by the prosecution in the form of dying declaration of deceased Sangita and the conviction of the accused persons could not have been based on such a doubtful evidence. The learned Counsel submitted that fitness of deceased Sangita was not obtained prior to recording of her statement and the evidence on record demonstrates that deceased Sangita was not fit to give her statement throughout while in the hospital. The learned Counsel further submitted that the thumb impression alleged to be of deceased Sangita below the said dying declaration is also doubtful having regard to the medical evidence on record. The learned Counsel submitted that in view of the fact that deceased Sangita had suffered 99% burns, it was not possible for her to affix her thumb impression on any document.

8) The learned Counsel further submitted that the statement of deceased Sangita, on the basis of which F.I.R. was registered in the

matter, is also shrouded with doubt. The learned Counsel submitted that having regard to the fact that deceased Sangita had burnt to 99%, it appears improbable that she would have given any such statement which runs into more than three pages and for recording of which, period of about more than one hour was likely to be exhausted. The learned Counsel further submitted that the facts, as are appearing in the dying declarations, one recorded by Naib Tahsildar and the other recorded by A.S.I. Mohan Natha Pawar, are inconsistent with each other. The learned Counsel submitted that the statement allegedly recorded by A.S.I. Pawar demonstrates that the facts, which would suit to the case of the prosecution, are introduced in the said statement, which were not stated by deceased Sangita in her alleged dying declaration allegedly recorded by the Naib Tahsildar.

9) Learned counsel further submitted that though there is no evidence on record showing

that accused No.3 was in the house when the alleged incident happened, the learned Trial Judge has erroneously held that the prosecution has sufficiently proved that accused No.3 poured kerosene on person of deceased Sangita and set her on fire. Learned Counsel further submitted that the Trial Court has failed in appreciating that having regard to the weak physical condition of accused No.3, it was impossible for her to pour kerosene on person of deceased Sangita who was well built. The learned Counsel further submitted that deceased Sangita could have easily over-powered the accused after noticing that she was attempting to pour kerosene on her person and could have avoided further mishap, if really it was a case that kerosene was poured on her by accused No.3.

10) The learned Counsel further submitted that in so far as allegation of cruelty is concerned, no cogent evidence has come on record to substantiate the said allegation. The learned

Counsel submitted that without there being any corroborating evidence, the learned Trial Judge has implicitly relied upon the dying declaration at Exhibit-44 recorded of the prosecutrix by the Naib Tahsildar. On the above said grounds, the learned Counsel prayed for setting aside the impugned judgment and order and consequently to acquit accused No.3 of the charges levelled against her.

11) The learned Counsel for accused No.3 in support of his arguments placed reliance on the following two judgments, -

(i) Maruti s/o Raghunath Kendre & Anr. Vs. The State of Maharashtra - 2014 ALL MR (Cri.) 3831;

(ii) Kunal Shivam Shejwal & Anr. Vs. The State of Maharashtra - 2015 ALL MR(Cri) 4370.

12) Shri S.G.Salgare, learned APP appearing for State, supported the impugned judgment and order. The learned APP submitted that the

version of the prosecutrix in both the dying declarations, one recorded by the Naib Tahsildar at Exh.44 and another recorded by ASI – Mohan Natha Pawar at Exh.37, is consistent and in both the dying declarations, deceased Sangita had named accused No.3 – Indubai to be a culprit. The learned APP further submitted that accused No.3 poured kerosene on person of deceased Sangita and set her on fire is the core fact involved in the present matter and in both the dying declarations, the said fact has been stated by deceased Sangita in the same manner.

13) The learned APP further submitted that PW 4 – Sampatlal Bamb, who was working as Naib Tahsildar at the relevant time at Ahmednagar, had recorded the dying declaration of deceased Sangita on 30th August, 2000 in the civil hospital at Ahmednagar. The learned APP submitted that PW 4 – Sampatlal Bamb is an independent witness. The learned APP further submitted that before recording the statement of deceased Sangita, PW 4

- Sampatlal Bamb had obtained opinion of the medical officer present at civil hospital at Ahmednagar about fitness of deceased Sangita to give her statement. The learned APP further submitted that PW 6 - Dr. Bapu Bhau Pote has accordingly made an endorsement below the dying declaration of deceased Sangita at Exh.44 recorded by PW 4 - Sampatlal Bamb. The learned APP submitted that nothing has been brought on record to disbelieve the testimony of PW 4 - Sampatlal Bamb and PW 6 -Dr. Bapu Pote.

14) Relying on the judgment of the Hon'ble Apex court in the case of Aashabai and Anr. Vs. State of Maharashtra - (2013) 2 SCC 224, learned APP submitted that when there are more than one dying declarations, each dying declaration has to be separately assessed and evaluated and should be assessed independently on its own merit. The learned APP further submitted that even if the statement of deceased Sangita at Exh. 37 recorded by A.S.I. - Mohan Natha Pawar (PW 2) is kept

aside, the dying declaration of deceased Sangita at Exh. 44 alone is sufficient to prove the guilt of the accused no.3. The learned APP further submitted that the learned trial court has correctly appreciated the evidence on record and has rightly held accused No.3 guilty for the offence punishable under Section 302 of IPC. The learned Counsel submitted that no case is made out by the appellant accused for causing any interference in the well-reasoned judgment passed by the learned Ad hoc Additional Sessions Judge. He, therefore, prayed for dismissal of the appeal.

15) We have given due consideration to the submissions made on behalf of learned Counsel appearing for the appellant and learned APP appearing for the State. On perusal of the impugned judgment, it is apparently revealed that the learned Trial Judge has fully relied upon the evidence brought on record by the prosecution in the form of dying declarations of deceased

Sangita.

16) Admittedly, there are two written dying declarations on record, one recorded by PW 4 – Sampatlal Bamb, the Naib Tahsildar, which is at Exh. 44 and the other recorded by A.S.I. Mohan Natha Pawar which is at Exh. 37. In fact, it is a statement recorded of deceased Sangita by A.S.I. Mohan Natha Pawar on the basis of which the crime was registered against the accused persons and the investigation was set in motion. It is now well settled that such a statement can also be considered as a dying declaration of deceased person. Moreover, there is oral dying declaration made by deceased Sangita to her father viz. Subhash Rangnath Kaware (PW 1). In all the three dying declarations, deceased Sangita has implicated name of accused No.3, viz. Indubai Ganpat Nehul. She has stated that her mother in law, i.e. accused No.3 – Indubai poured kerosene on her person and set her on fire.

17) The dying declaration is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak truth and only the truth. Normally in such situations, the Courts attach the intrinsic value of truthfulness to such statement. If such statement is made voluntarily, if it is reliable and is not an attempt by deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction.

18) After deceased Sangita was admitted in civil hospital at Ahmednagar on the next day of it, her dying declaration was recorded by Naib Tahsildar at Ahmednagar. During the course of the trial, the Naib Tahsildar, who recorded the said statement, was examined as a prosecution witness. PW 4 - Sampatlal Bamb was the said Naib Tahsildar. In his testimony before the Court, PW

4 - Sampatlal has stated that on 29th August, 2000, a report was received from Kotwali police station about admission of deceased Sangita in civil hospital at Ahmednagar due to 100% burn injuries and a requisition was also received for recording her dying declaration. The said report was received at night hours. As has been further deposed by PW 4, Tahsildar Ahmednagar deputed him for recording dying declaration of deceased Sangita and accordingly on 30th August, 2000 at 3.00 p.m. he had been to civil hospital, Ahmednagar for recording the dying declaration of deceased Sangita. He first met the incharge medical officer and requested him to examine deceased Sangita and give his opinion whether she was conscious. The said medical officer examined deceased Sangita and opined that she was conscious meaning thereby that she was in a position to give her statement. As has further come on record in the evidence of said PW 4, he then went to the Burn ward with the medical officer and recorded the dying declaration of

deceased Sangita in question and answer form. PW 4 has further deposed that he recorded the statement as per the say of deceased Sangita and then obtained her right hand thumb impression on the said statement. He then signed the said statement to evince that it was made before him. He also obtained endorsement from the medical officer that the patient was conscious. During the course of his evidence, PW 4 filed on record original dying declaration. He identified the thumb impression of deceased Sangita on th said dying declaration. During the course of the evidence of PW 4 the dying declaration recorded by him of deceased Sangita was held to have been duly proved and it was, therefore, exhibited as Exh. 44.

19) We have carefully perused the contents of the dying declaration of deceased at Exh. 44. We find it appropriate to reproduce herein below the relevant portion of the said dying declaration, which reads thus, -

“१५. थोडक्यात हकिकत :- माझे नंदोई सुभाष काकडे यांचे घराच्या भिंतीना पाटाचे पाणी लागल्याने नविन घर बांधण्यासाठी त्यांनी आमचे कडे रु.२५ हजाराची मागणी केली. त्यावेळेस मी काही बोलले नाही. त्यामुळे माझे पती नानासाहेब गणपत नेहुल हे मला सारखे मारहाण करीत होते. त्या कारणामुळे माझी सासू इंदूबाई गणपत नेहुल, ननंद बेबी सुभाष काकडे, व माझे नंदोई, सुभाष लक्ष्मण काकडे यांनी चौघांनी मिळून मला मारण्याचा प्लॉन तयार केला दि. २९.८.२००० रोजी माझे पती नानासाहेब गणपत नेहुल हे कामावर निघून गेले त्यानंतर माझी सासू इंदूबाई गणपत नेहुल यांनी स्टोव्ह मधील रॉकेल अंगावर टाकून काडी ओढून अंगावर टाकली व ती लगेच बाहेर पळून गेली. व तिने लोकांना मी पेटून घेतले असे सांगितले त्यानंतर लोक आले त्यांनी मला विझविले व पुढील उपचारासाठी मला नगरला आणले आहे. वरील सर्व लिहिलेला मजकूर मला वाचून दाखविला व तो माझ्या सांगितल्या प्रमाणेच लिहिलेला आहे.

जबाब पूर्ण झाल्याची वेळ दिनांक ३०.८.२००० दुपारी ३ वाजून २० मि.

समक्ष
सही/-
(एस.डी.बंब)
नायब तहशिलदार, नगर

सही निशानी अंगठा
सौ. संगिता नानासाहेब नेहुल यांच्या
उजव्या हाताचा असे.

Pt. Concious
Sd/- xxx 30/8/2000
3.00 pm to 3.25 p.m.”

20) It is the matter of record that PW 2 — Mohan Natha Pawar had also recorded statement of deceased Sangita on 30th August, 2000 in the civil hospital at Ahmednagar. In has come on record in

the evidence of PW 2 – Mohan that at the relevant time, he was attached to Pathardi police station and on 30th August, 2000, he was directed to visit civil hospital at Ahmednagar and record statement of deceased Sangita, who was admitted there as a burn case. PW 2 – Mohan has further deposed that he reached to the civil hospital, Ahmednagar at about 8.00 p.m. and enquired with the medical officer whether deceased Sangita was in a position to give her statement or not and requested the said medical officer to examine Sangita and to ascertain her fitness and to give report accordingly. PW 2 further deposed that the said medical officer examined Sangita and told him that she was in a position to give her statement. As has been further deposed by PW 2, he then recorded the statement of deceased Sangita as per her say and after the recording was completed, read over the said statement to deceased Sangita, who admitted the contents to be correct. PW 2 has further deposed that he then obtained the thumb impression of deceased Sangita

on the said statement. It has also come on record that he also obtained signature of the medical officer on the said statement and also made his endorsement. During the course of the evidence of PW 2 – Mohan, the statement so recorded by him of deceased Sangita was marked at Exh. 37. The statement recorded by PW 2 of deceased Sangita runs into about three pages. In the said dying declaration also deceased Sangita had alleged that her husband, mother-in-law, sister-in-law and brother-in-law had demanded a sum of Rs.25,000/- from her and were harassing her for non-fulfillment of the said demand. In the said statement also, deceased Sangita had alleged that on 29th August, 2000, in the evening at about 4.30 p.m., her mother-in-law Indubai (Accused No.3) poured kerosene in the iron stove on her person and set her ablaze. Deceased Sangita had also disclosed to PW 2 – Mohan Natha Pawar that after setting her ablaze, accused No.3 ran out of the house and made a scene that deceased Sangita has set herself on fire.

21) Learned Trial Court held both the dying declarations to be trust-worthy and on the basis of the facts, as were stated by deceased Sangita in both the said dying declarations, held accused No.3 guilty for knowingly and intentionally causing death of deceased Sangita by setting her on fire. As has been observed by the learned trial Judge, while giving the aforesaid two statements, deceased Sangita was in a fit physical condition and the statements so given were quite natural and trustworthy.

22) As noted by us herein above, the entire thrust of the learned Counsel for the appellant was on the point that the trial court has wrongly relied upon the evidence in the form of dying declarations. According to the learned Counsel, the trial court could not have relied upon such evidence since both the dying declarations are not consistent with each other. We have summarized the objections, as are raised by the learned Counsel for the appellant, in the earlier

paragraphs. We would like to deal with each of the said objections separately and in the same sequence they are raised.

23) The first objection, as has been raised by the learned Counsel for the appellant, is that when there are two dying declarations on record and they are inconsistent with each other, in no case, the conviction of the accused could have been based on the basis of such dying declarations. In order to support his said contention, the learned Counsel relied upon the judgment of the Division Bench of this Court in the case of Maruti s/o Raghunath Kendre and Anr.. Vs. State of Maharashtra (cited supra).

24) We have carefully perused the entire text of the said judgment. There cannot be a dispute as about the law laid down in the aforesaid judgment, however, the same would not apply to the facts of the present case. Though it is true that in the said case also, two dying

declarations were there on record, as observed by the Division Bench, there were major discrepancies in both the dying declarations as to the place of incident and as regards the case for picking quarrel between the deceased and the accused. Secondly, the thumb impression of the deceased itself was noticed to be doubtful by the Division Bench. It was observed by the Division Bench that in view of the port-mortem report to the effect that both the upper limbs of deceased were burnt, bearing of thumb impression of the deceased below the said dying declaration was doubtful. In the aforesaid circumstances, the Division Bench had quashed and set aside the order of conviction passed by the court below.

25) The facts involved in the instant case are altogether different and obviously, therefore, the ratio laid down in the aforesaid judgment may not apply to the facts of the present case. Though it is true that in the present matter also, there are two dying

declarations, they are not inconsistent with each other. Merely because the dying declaration at Exh. 44 recorded by Naib-Tahsildar is precise and short, whereas the dying declaration at Exh. 37 recorded by the A.S.I. Mohan Natha Pawar runs into three pages and provides some more particulars, it cannot be a ground for holding these two dying declarations inconsistent with each other. It has to be stated that in both the dying declarations the core facts, as are stated by deceased Sangita, are substantially same. In both the dying declarations, deceased Sangita is stated to have disclosed that there was a demand of Rs.25,000/- from the accused persons. The reason for such demand, as has been assigned in both the dying declarations, is also the same. It was stated by deceased Sangita that some damage had been caused to the house of her sister-in-law and for carrying out the repairs of the said house, an amount of Rs. 25,000/- was demanded by the accused persons from her. Both the dying declarations contain the uniform

accusation that Indubai (Accused No.3), poured kerosene in the iron stove on person of deceased Sangita and set her on fire. Both the dying declarations are unvaried on the fact that after pouring kerosene on person of deceased Sangita, Indubai (Accused No.3) threw on person of deceased Sangita an ignited match-stick and set her ablaze. In both the dying declarations deceased Sangita had further stated the congruent fact that after setting deceased Sangita on fire, accused No.3 ran out of the house and made a scene that deceased Sangita had set herself on fire. It is thus quite evident that in so far as core and material facts relating to the cause of death are concerned, are almost similar in both the dying declarations. In the circumstances, the judgment relied upon by the learned Counsel for the appellant, in the case of Maruti Kendre & Anr. (cited supra) may not be of any help for appellant No.2.

26) One more judgment was relied upon by the

learned Counsel that too of the Division Bench of this court in the case of Kunal Shivram Shejwal and Anr. Vs. State of Maharashtra (cited supra). In the said matter also, there were two dying declarations, however, material improvements and variations were noticed in the subsequent dying declaration and in the circumstances, it was held by the Division Bench that a deliberate attempt was made by the prosecution to rope in other accused, which were not named in the earlier dying declaration. Moreover, in the oral dying declaration given by deceased in the said case, she had involved husband, mother-in-law, sister-in-law and her nephew, whereas in the written dying declaration, the accusations were only against the mother-in-law. In the facts of the present case, the aforesaid judgment also, therefore, may not apply.

27) The another objection, which with equal vehemence was pressed by the learned Counsel for the appellant was that of improbability of the

thumb impression below the dying declarations alleged to be of deceased Sangita. As was argued by the learned Counsel, having considered the fact that deceased Sangita had burns to the extent of 99%, it was difficult nay impossible to get affixed the thumb impression of the deceased below the dying declarations. It was further contended by the learned Counsel that from the evidence on record, serious doubts are also raised whether at the relevant time, deceased Sangita was able to speak so as to record her dying declarations.

28) Having carefully considered the evidence on record, we do not find any substance in both the aforesaid objections. It is true that deceased Sangita had received extensive burn injuries and its percentage, as was stated in the post-mortem examination report (Exh. 46) was 99%. The question, therefore, arises whether the percentage of burns suffered, can be a determinative factor to affect the credibility of

the dying declarations and the improbability of its recording. The similar question had fallen for considered before the Hon'ble Apex court in the case of P.V.Radhakrishna Vs. State of Karnataka - A.I.R. 2003 (SC) 2859. The Hon'ble Apex court has held in the said matter that there is no hard and fast rule of universal application in this regard. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration.

29) In the instant matter, as has come on record, before recording the statement of deceased Sangita by PW 4 - Sampatlal Bamb, deceased Sangita was examined and certified to be fit for giving her statement by Dr. Bapu Bhau Pote (PW 6). As has been deposed by PW 6 - Dr. Pote, at the relevant time, he was in the Burn

Ward when PW 4 arrived there for the purpose of recording the dying declaration of deceased Sangita. He has further deposed that he then examined deceased Sangita clinically and opined that she was normal and able to give her statement. Dr.Pote has further deposed that PW 4 thereafter recorded the statement of deceased Sangita and he was throughout present when such statement was being recorded. Dr. Pote has further deposed that after recording of the statement was completed, he again examined deceased Sangita and opined that she was normal. Dr. Pote has also deposed that accordingly he had made an endorsement on the dying declaration so recorded of deceased Sangita.

30) It was sought to be canvassed by the learned Counsel for the appellant that Dr. Pote in his cross-examination has clearly admitted that he had not mentioned on the dying declaration at Exh. 44 that the patient was in a position to give statement. There appears no

much substance in the objection so raised in view of the immediate further statement made by Dr. Pote that making of such endorsement on the dying declaration is not mandatory requirement. It is further significant to note that Dr. Pote candidly denied the suggestion that in case of 99% burns, voice of the patient becomes feeble. Dr. Pote has also denied the suggestion that tongue, mouth and lips of the patient, i.e. deceased Sangita, were highly affected due to the burns. It is pertinent to state that to a question asked to Dr. Pote by the Sessions Court, he had answered that he had mentioned that the patient was conscious, oriented and speech normal. Dr. Pote has further clarified that 'oriented' means mental condition of the patient was normal. Dr. Pote has also denied the further suggestion that in case of 99% burns, there is always mental affection, possibility of weakness and confused intellectual power etc.

31) An another attempt was made to suggest

Dr. Manoj Ghuge (PW 5), who had conducted the post-mortem on the dead body of deceased Sangita, that the mouth and tongue of deceased Sangita were affected due to burn; Dr. Manoj Ghuge, however, had denied the said suggestion. Dr. Ghuge had further clarified that in case of facial burns, it depends upon particular case that uttering of a word becomes difficult. Further, though it was vehemently argued by the learned Counsel for the appellant that the percentage of burn injuries caused to deceased Sangita was 99% and as such it was impossible to obtain the thumb impression of deceased Sangita below the dying declaration, the contention so raised also deserves to be rejected. In his testimony before the court, Dr. Pote (PW 6) has deposed that after PW 4 completed the recording of the dying declaration of deceased Sangita, he made endorsement on the said statement at 3.25 p.m. Dr. Pote has further deposed that 'then thumb impression of right-hand of the patient was obtained'. It is thus evident that the thumb

impression was obtained in presence of Dr. Pote. In the cross-examination of Dr. Pote, nothing has been asked to him as about the fact so deposed by him in his examination-in-chief that the thumb impression of the right-hand of the patient was obtained on the dying declaration. Secondly, the defense did not put any question either to the Executive Magistrate Mr. Sampatlal Bamb or to Dr. Pote or to Dr. Ghuge, with respect to whether any part of thumb had skin on it or not as in both the dying declarations ridges and curves had been clearly found to exist.

32) In the above circumstances, there seems no reason to disbelieve the testimony of PW 4 – Sampatlal Bamb, corroborated by PW 6 – Dr. Pote, that, the thumb impression of the right hand of deceased Sangita was obtained below the dying declaration. Similarly, the objection that deceased Sangita was not in a fit physical and mental condition at the time of giving her statement, has also to be rejected.

33) One more objection was raised by the learned counsel for the appellant that the trial court has failed in considering that the story allegedly stated by deceased Sangita in her dying declaration that accused No.3 poured kerosene on her person and then set her on fire, was difficult to be believed having regard to the respective physical conditions of deceased Sangita and accused No.3. The learned Counsel pointed out that PW 1 – Suhas Rangnath Kaware, father of deceased Sangita has admitted in his cross-examination that accused No.3 was physically weak, whereas deceased Sangita possessed a strong body. The learned Counsel submitted that in the circumstances it appears improbable that accused No.3 alone could have poured kerosene on person of deceased Sangita and set her ablaze. The learned Counsel had further argued that deceased Sangita could have easily over-powered accused No.3 after it was noticed by her that accused No.3 has poured kerosene on her person, before she ignites the match-stick and

applies the same to the apparels on her person drenched with kerosene.

34) We are, however, not impressed with the submission so made. Firstly, the constitution of body alone may not be a decisive factor. What will be more important is determination to carry out any particular act. From the evidence on record, there is reason to believe that accused No.3 was determined to set deceased Sangita on fire. Further as is revealing from the record and as has been specifically stated by deceased Sangita in her dying declarations immediately after pouring kerosene on her person, accused No.3 threw the ignited match-stick on her person and ran out of the house. In the circumstances, there is reason to believe that it could not have become possible to deceased Sangita to resist the attack from accused No.3 or to overpower her. Moreover, on such an objection, the prosecution case which otherwise appears to be trust-worthy, cannot be rejected or disbelieved.

35) From the discussion made as above, thus there appears no much substance in the grounds as are raised on behalf of the appellant in exception to the impugned judgment and order. Though in the instant matter, two dying declarations were recorded of deceased Sangita, one by the Executive Magistrate and another by the A.S.I. both the dying declarations are consistent with each other in all material particulars and both the dying declarations appear to have been made by the deceased voluntarily.

36) As has been elaborately discussed by us herein above, deceased Sangita was in fit physical condition while giving her both the aforesaid dying declarations. Though the dying declaration recorded by A.S.I. Mohan Natha Pawar at Exh. 37, is more exhaustive and runs into three pages, that may not be a ground for rejecting the said dying declaration in view of the fact that the fundamental facts, which go to

the root of the matter, are unvaried in both the dying declarations.

37) It is well-settled that where the dying declaration is recorded by a Magistrate and there is no infirmity in recording of the said dying declaration, the dying declaration so recorded inspires confidence. In the instant matter, Naib Tahsildar – Sampatlal Bamb has recorded the dying declaration of deceased Sangita at Exh. 44. As was deposed by him, he was specifically deputed for the purpose of recording the dying declaration of deceased Sangita by Tahsildar Ahmednagar. He had accordingly proceeded to the hospital and recorded the statement of deceased Sangita in presence of the doctor. As has come on record, before recording of her statement, deceased Sangita was certified to be fit for giving her statement by medical officer Dr. Pote (PW 6). The statement was recorded in the form of questions and answers. From the nature of the answers the deceased has given, it cannot be said

that she had not understood the questions and has not given proper answers. It has to be therefore held that the mental capacity of deceased Sangita was sound and she was capable of giving answers to the questions put forth by the Tahsildar. Moreover, as noted herein above, Dr. Pote in an answer to the question put to him by the Sessions Court, had clarified that deceased Sangita was oriented meaning thereby that her mental condition was sound. PW 6 Dr. Pote was throughout present during the course of recording of the said statement. Dr. Pote has also put his endorsement about the fitness of deceased Sangita for giving her statement on the dying declaration recorded by the Tahsildar. The thumb impression of deceased Sangita was obtained below the said declaration in presence of Dr. Pote. PW 4 — Sampatlal Bamb had also put his signature below the said statement. We have, therefore, no hesitation in holding that the dying declaration recorded by the Executive Magistrate, cannot be assailed on any germane ground. The Magistrate

being a dis-interested witness and a responsible officer and there being no circumstance or material to suspect that the Magistrate had any animus against accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration recorded by the Magistrate does not arise. In the circumstance, even if the dying declaration at Exh. 37 recorded by the A.S.I. Mohan Natha Pawar is kept out of consideration, the fact remains that in the dying declaration at Exh.44, deceased Sangita had clearly implicated accused No.3 to be the culprit and had made a specific allegation against her that it was accused No.3, who poured kerosene on her person and set her ablaze.

38) It is not in dispute that deceased Sangita suffered death because of the burn injuries. Dr. Manoj Ghuge (PW 5), who had conducted post mortem examination of the dead body of deceased Sangita, has specifically deposed that deceased Sangita died because of the

cardiac respiratory failure due to septicemic shock due to 99% burns. Dr. Ghuge has also deposed that the injuries as are mentioned in column No.17 of the post mortem report (Exh.46) were ante-mortem and sufficient to cause death of deceased Sangita in the ordinary course of nature. From the evidence on record, there has remained no doubt that deceased Sangita suffered a homicidal death. A feeble attempt was made to suggest P.S.I. Rajaram Atmaram Patil (PW 3) the Investigating Officer that it was transpired in the investigation that deceased Sangita suffered an accidental death and it was not the case of murder. Of course, the said suggestion was flatly denied by PW 3 - Rajaram Atmaram Patil. Except the suggestion, as above, nothing has been brought on record by the accused so as to draw any inference even remotely that there was any possibility of deceased Sangita suffering an accidental death. Neither any such suggestion was given to PW 1 - Suhas Rangnath Kaware father of deceased Sangita nor to Dr. Manoj Ghuge (PW

5), who had conducted the post mortem examination and not also to any other witness examined by the prosecution. Though one Vishwas Nehul was examined by the accused, as a defence witness, even nothing has been brought on record through his evidence, suggesting that deceased Sangita accidentally got burnt and that the allegation made against accused No.3 – Indubai that she poured kerosene on person of deceased Sangita and set her ablaze, was a false allegation. The accused admittedly did not take any defence that deceased Sangita committed suicide. Moreover, in the dying declarations given by deceased Sangita to the Executive Magistrate and to the police, she has made specific allegations that accused No.3 – Indubai poured kerosene on her person and set her ablaze. It has to be noted that in both the dying declarations it was also stated by deceased Sangita that after setting her on fire, accused No.3 ran out of the house and attempted to create a false scene that deceased Sangita set herself her on fire.

39) From the evidence, which has been brought on record, the prosecution has beyond reasonable doubt proved that deceased Sangita suffered a homicidal death. As elaborately discussed by us herein above, the prosecution has successfully proved both the dying declarations of deceased Sangita, one recorded by the Executive Magistrate and other by Asstt. Sub Inspector. As noted by us, both the dying declarations are found to be trust-worthy and inspire confidence. Both the dying declarations have been duly proved by the prosecution. The objections, as were raised on behalf of the appellant as about the validity and trustworthiness of the said dying declarations have been rejected by us by recording our reasons therefor. Law is well-settled that dying declaration can be the sole basis for conviction. We deem it appropriate to reproduce herein below some of the observations made in this regard by the Hon'ble Apex court in the case of P.V.Radha.

Krishna Vs.State of Karnataka (cited supra),

which read thus, -

" The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full

confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

40) After having considered the entire evidence on record, we have no hesitation in our mind that the prosecution has beyond reasonable doubt proved that appellant No.2, i.e. original accused No.3, knowingly and intentionally caused

death of deceased Sangita by pouring kerosene on her person and setting her ablaze and has thus committed the offence punishable under Section 302 of IPC. It has to be stated that deceased Sangita was only of the age of 20 years at the relevant time and got married with original accused No.1 two years prior to the said incident. It does not appear to us that the trial court has committed any error in holding appellant No.2 – Indubai Ganpat Nehul guilty for the offence punishable under Sections 302, 498A and 323 of IPC. We have not indulged in making any elaborate discussion as about the conviction of accused No.3 for the offences punishable under Section 498A and 323 of IPC for the reason that the averments in the dying declarations of deceased Sangita sufficiently constitute both the aforesaid offences also. The appeal being devoid of any merit deserves to be dismissed and is accordingly dismissed. Appellant No.2 – Indubai Ganpat Nehul shall forthwith surrender before the Trial Court to undergo remaining sentence. The

appellant-accused be given set-off under Section 428 of the Cr.P.C of the period already undergone, if any.

(P.R.BORA)
JUDGE

(SUNIL P.DESHMUKH)
JUDGE

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fldr 12.2.18