

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

CRIMINAL APPEAL NO.94 OF 2003

1. Prakash s/o Bhausahab Kale  
Age : 32 years, Occu : Labour
2. Narmadabai w/o Bhausahab Kale  
Age : 54 years, Occu : Labour

Both r/o. Imampur, Tq. &  
Dist. Ahmednagar

.. Appellants

Versus

The State of Maharashtra

.. Respondent

....

Shri Joydeep Chatterji, Advocate for Appellants  
Mrs Vaishali S. Chaudhari, APP for Respondent – State

.....

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

Reserved on : 12.01.2018  
Pronounced on : 25.01.2018

Judgment (Per P.R. Bora, J) :

1. The appellants were tried by the First Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No.23 of 1999 on the charges of having committed murder of Sangita Prakash Kale, the wife of appellant no.1 and the daughter-in-law of appellant no.2, by pouring kerosene on her person and setting her ablaze and also for having subjected her to cruelty. The learned trial Judge found the appellants guilty on both the counts

and has, therefore, convicted both of them for committing the offences punishable under Sections 498-A & 302 of Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced them to suffer rigorous imprisonment for life and fine of Rs.2,000/- each, in default to suffer simple imprisonment for six months each for the offence punishable under Section 302 of I.P.C., and to suffer rigorous imprisonment for three years and fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months each for the offence punishable under Section 498-A of I.P.C. Both the sentences are directed to run concurrently. The appellants have preferred the present appeal questioning the legality and correctness of the order of conviction and sentence so passed against them.

2. Deceased Sangita was married to appellant no.1 prior to about 5 years of the alleged incident. After her marriage, she started residing with her husband and in-laws at village Imampur. The matrimonial family of deceased Sangita was consisting of her husband, father-in-law, mother-in-law and brother-in-law. As is revealing from the case of the prosecution, for initial three years, deceased Sangita was treated well by her husband as well as in-laws. However, since deceased Sangita could not conceive, the accused started ill-treating her. It was alleged that, both the accused used to humiliate deceased

Sangita by calling her '*wanzoti*' (वांझोटी) (a woman who cannot conceive). It was further alleged that, on 07.12.1998 when deceased Sangita was cooking food on the stove, the appellants started humiliating her on account of her inability to conceive. It was also alleged that, the appellants abused deceased Sangita on that count and eventually poured kerosene on her person and set her ablaze. It was also alleged that, when deceased Sangita was engulfed in the flames, the appellants closed the door of the said room from outside. It was the further case of the prosecution that, the brother-in-law of deceased Sangita namely Ramesh tried to save deceased Sangita by dousing the fire and reached her to the Government Hospital. While under treatment, Sangita died on 08.12.1998. While admitted in the Civil Hospital, the statement of deceased Sangita was recorded by the police and on the basis of the said statement, the crime was initially registered for the offences punishable under Sections 498-A, 307, 504 & 506 read with Section 34 of I.P.C. After the death of Sangita, the offence initially registered under Section-307 of I.P.C. was converted into an offence under Section 302 of I.P.C.

3. During the course of investigation, the Investigating Officer got prepared the inquest panchanama, post-mortem examination was done of the dead body of deceased Sangita. The spot, where the alleged incident was stated to have occurred, was visited by the Investigating Officer and

panchanama thereof was also prepared. The Investigating Officer recorded the statements of the necessary witnesses. The material on record reveals that, the dying declaration of deceased Sangita was recorded by one Ashok Vitthal Bhor (PW No.5), who at the relevant time was working as Special Executive Officer, at Ahmednagar. On requisition of the police, he visited the Civil Hospital at Ahmednagar on 08.12.1998 and recorded the statement of deceased Sangita during the period between 02:00 p.m. to 02:25 p.m. After completing the investigation, the charge-sheet was filed against the accused in the Court of Chief Judicial Magistrate, at Ahmednagar. Since the offences alleged against the appellants were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

4. The learned First Ad-hoc Additional Sessions Judge, Ahmednagar, then framed the charge against the accused on 08.08.2002, the accused did not plead guilty and claimed to be tried. In order to prove the guilt of the accused, the prosecution examined five witnesses and also placed on record the documentary evidence in the form of various panchanamas, post-mortem examination report and C.A. Reports. PW No.1 Raosaheb Ramchandra Shinde is the panch witness, in whose presence, the inquest panchanama was drawn on 09.12.1998.

The father of deceased Sangita namely Maruti Dagadu Nikam testified as the second witness of the prosecution. Dr Bhaskar Nanasaheb Rannanware, who had conducted the post-mortem examination on the dead body of the Sangita, was examined as PW No.3. Namdeo Madhav Aware, in whose presence the panchanama of the spot was stated to have drawn, was examined as PW No.4. He did not fully support the prosecution and hence was required to be cross-examined by the learned APP. The prosecution evidence was concluded after examination of Special Executive Magistrate, Shri Ashok Vitthal Bhor, who stated to have recorded the dying declaration of deceased Sangita at the Civil Hospital, Ahmednagar on 08.12.1998.

5. According to the accused, deceased Sangita suffered an accidental death. It was their contention that, on 07.12.1998 in the night when Sangita was cooking the food on the kerosene stove, it flared up and Sangita caught fire and suffered extensive burn injuries. The accused denied that, there was any ill-treatment to deceased Sangita from them. The accused have also denied the allegation that, they had poured kerosene on person of Sangita and set her on fire. The accused in their defence examined one Satish Prabhakar Mule, who had recorded the dying declaration of deceased Sangita on 07.12.1998 at Civil Hospital, Ahmednagar. In the dying declaration so recorded by

the said witness, deceased Sangita is alleged to have stated that, she got accidentally burnt as the stove burst while she was cooking food.

6. The learned trial Court, after having assessed the oral as well as documentary evidence brought on record, held both the accused guilty for the offences punishable under Sections 302 and 498-A read with 34 of I.P.C. and sentenced them to suffer punishment as noted herein above. Aggrieved by, the appellants have preferred the present appeal.

7. Shri Chatterji, learned Counsel appearing for the appellants – accused assailed the impugned Judgment on various grounds. The learned Counsel submitted that, the impugned Judgment is based on presumptions, surmises and conjectures. The learned Counsel further submitted that, the learned trial Judge has failed in appreciating that, the prosecution has intentionally attempted to suppress the first dying declaration recorded by Special Judicial Magistrate, Shri Satish Mule (DW No.1) on 07.12.1998, wherein the deceased had categorically stated that, she sustained burns accidentally. The learned Counsel submitted that, the prosecution has failed in explaining why more than one dying declarations were recorded of the deceased. The learned Counsel further submitted that,

the evidence on record clearly demonstrates that, the second dying declaration recorded by PW-5 Ashok Vitthal Bhor does not bear any endorsement upon the same that, deceased Sangita was in a fit physical condition and conscious state of mind to give her statement. The learned Counsel submitted that, from the evidence on record, there is reason to believe that, the opinion of the doctor has been obtained by the police subsequently on a separate paper. The learned Counsel submitted that, no reliance could have been placed by the learned trial Court on such evidence. The learned Counsel further submitted that, there is absolutely no evidence on record so as to hold that, the appellants had subjected deceased Sangita to cruelty on any count. The learned Counsel submitted that, the trial Court has failed in appreciating that, had there been substance in the allegations made by PW-2 Maruti Dagadu Nikam, the father of deceased Sangita, that she was ill-treated by the appellants, he would have certainly filed a complaint against the appellants -accused in that regard. The learned Counsel submitted that, the trial Court has failed in appreciating that, non-examination of the Investigating Officer as well as the other material witnesses, more particularly, Ramesh Kale the brother-in-law of deceased Sangita was fatal for the case of the prosecution. The learned Counsel further submitted that, deceased Sangita was admittedly burnt to the extent of 92% and in such circumstances, serious

doubts are raised 'whether she was in a condition to give her statement to PW No.5 Ashok Bhor on 08.12.1998 and affix her thumb impression thereon'. The learned Counsel further submitted that, the prosecution has utterly failed in bringing on record any evidence to show that, the first dying declaration given by deceased Sangita was not voluntary. On the contrary, according to the learned Counsel, the circumstances on record clearly demonstrate that, the second dying declaration was given by deceased Sangita at the instance of her parents, who were constantly near her at the relevant time.

8. The learned Counsel for the accused relied upon the following Judgments:

- (i) P. V. Radhakrishna Vs. State of Karnataka, AIR 2003 Supreme Court Page No.2859.
- (ii) Gaffar Badshaha Pathan Vs. State of Maharashtra, 2005 AIR SCW 3264.
- (iii) Narendra s/o. Vitthalrao Hingane Vs. State of Maharashtra, 2017 ALL MR (Cri) 5267.

9. The learned APP supported the impugned Judgment and order. The learned APP submitted that, the prosecution has duly proved the dying declaration of the deceased recorded by PW No.5 Ashok Vitthal Bhor. The learned APP submitted that, in the dying declaration recorded by PW No.5 Ashok Vitthal Bhor, deceased Sangita had specifically alleged that, the accused picked up quarrel with her on account of her inability to conceive

and poured kerosene on her person and set her on fire. The learned APP submitted that, nothing has come on record in the cross-examination of PW No.5 Ashok Vitthal Bhore so as to discard or disbelieve his testimony. The learned APP submitted that, PW No.5 Ashok Bhore has deposed that, while recording the statement of deceased Sangita, he had obtained the certificate of the Medical Officer present there that Sangita was fit for giving her statement. The learned APP further submitted that, merely because the said Medical Officer has not made an endorsement on the document of the dying declaration itself, the said certificate cannot be discarded. The learned APP further submitted that, as has come on record in the evidence of PW No.2 Maruti Dagadu Nikam, the first dying declaration was given by deceased Sangita under the pressure of the accused persons. The learned APP submitted that, PW No.2 Maruti Dagadu Nikam has specifically alleged that, deceased Sangita was threatened with her life if she makes any complaint against the accused persons. The learned APP submitted that, in such circumstances, the Investigating Officer was fully justified in getting recorded the second dying declaration of deceased Sangita and considering the circumstances on record, the same has been rightly believed by the learned trial Court. The learned APP further submitted that, insofar as the ill-treatment to deceased Sangita is concerned, the evidence of PW-2 Maruti

Dagadu Nikam is sufficient to hold the accused guilty. The learned APP submitted that, as has come on record, since deceased Sangita did not conceive even after four years of her marriage, the accused were aggrieved and had started harassing Sangita on that count. The learned APP further submitted that, the injuries, which are noticed on person of deceased Sangita and the percentage of the burn have ruled out the possibility of the accidental or suicidal death of deceased Sangita and only conclusion which emerges lead to an inference that, Sangita suffered homicidal death. The learned APP submitted that, the unnatural death of deceased Sangita, since had occurred within 5 years of her marriage, presumption of ill-treatment has to be raised under Section 113-A of the Evidence Act. The learned APP further submitted that, merely because the Investigating Officer was not examined as a witness before trial Court would not nullify the existing evidence on record. The learned APP submitted that, the existing evidence on record itself is sufficient to prove the guilt of the accused and the learned trial Court has rightly held the accused persons guilty for committing murder of deceased Sangita.

10. In support of her argument, the learned APP relied upon the following Judgments:

(i) Behari Prasad Vs. State of Bihar, Supreme

Court, decided on January 09, 1996.

(ii) Laxman Vs. State of Maharashtra, Supreme Court, decided on August 27, 2002

(iii) Suresh Vishwanath Jadhav Vs. State of Maharashtra, 2006 CRI.L.J. 4277

11. Perusal of the impugned Judgment reveals that, learned trial Judge has relied upon the dying declaration recorded of deceased Sangita by PW-5 Ashok Vitthal Bhor as well as the testimony of PW-2 Maruti Dagadu Nikam, the father of deceased Sangita.

12. In the dying declaration (Exh.42) recorded by PW-5 Ashok Vitthal Bhor, deceased Sangita has specifically stated that, her husband and mother-in-law poured kerosene on her person and set her on fire at about 08:00 p.m. on 07.12.1998. Deceased Sangita, in her said statement, had also disclosed to PW-5 Ashok Bhor that, her inability to conceive was the reason for her husband and mother-in-law to pour kerosene on her person and set her on fire. Deceased Sangita had also stated that, her brother-in-law namely Ramesh Kale extinguished the fire by putting quilt on her person and brought her in the hospital. Lastly, she has reiterated that, she had a complaint against Narmadabai Bhausahab Kale i.e. mother-in-law and Prakash Bhausahab Kale i.e. her husband. As has been observed by the learned trial Judge, the defence did not bring on record

any circumstance in the cross-examination of PW-5 Ashok Vitthal Bhor so as to disbelieve his testimony before the Court.

13. It is the matter of record that, the accused examined DW-1 Satish Prabhakar Mule. It has come on record that on 07.12.1998 in the period between 10:55 p.m. to 11:10 p.m., he had recorded the statement of deceased Sangita in the Civil Hospital, at Ahmednagar. The dying declaration so recorded by DW-1 Satish Mule has been exhibited as Exh.55. As deposed by DW-1 Satish Mule, it was stated by deceased Sangita in her said dying declaration that, when she was trying to start the kerosene stove for cooking food, it flared and because of that, she got burnt. It was also stated by deceased Sangita in her said statement that, she does not have any complaint against anybody in her house.

14. As has been deposed by DW-1 Satish Mule, he had received a requisition from Police Station M.I.D.C. in the night of 07.12.1998 requesting him to come in the Civil Hospital, at Ahmednagar and to record the statement of Sangita Prakash Kale, who was burnt to the extent of 90%. DW-1 Satish Mule has also deposed that, before recording the statement of deceased Sangita, he had asked for the opinion of the Medical Officer in the Civil Hospital about the physical and mental fitness

of deceased Sangita for giving her statement. Accordingly the concerned Medical Officer has certified deceased Sangita to be fit for giving her statement and had made the endorsement in that regard prior to recording the statement and also after recording of the statement.

15. The learned trial Judge has discarded the dying declaration at Exh.55 brought on record by the defence and has preferred to rely upon the dying declaration at Exh.42 recorded by PW-5 Ashok Vitthal Bhor.

16. While criticizing the impugned judgment, the entire thrust of Shri Chatterji, learned Counsel appearing for the appellants was on the point that, where more than one dying declarations were recorded and the deceased made contradictory statements in the said dying declarations, in no case the accused could have been convicted on the basis of one of such dying declaration. The learned Counsel in support of his said contention relied upon the judgment of the Division Bench of this High Court in the case of Narendra s/o. Vitthalrao Hingane Vs. State of Maharashtra, 2017 ALL MR (Cri) 5267. The learned Counsel pointed out the observations made by the Division Bench in para-10 of the said Judgment, which read thus :

“10. The approach of the Court should not be

"pick and choose". When there are two sets of Dying Declarations and there is variance on material aspect. If one shows that incident caused due to accident and another shows otherwise, and if there is nothing available to show any suspicious circumstance around the Dying Declaration which absolves the accused then in that event benefit must go to the accused. In that view of the matter, according to us, this is not a case wherein this Court should stamp its approval to the judgment and order of conviction. Resultantly, we pass the following order."

17. The learned Counsel submitted that, in view of the law laid down in the aforesaid Judgment, the appellants deserve to be acquitted.

18. Relying upon the Judgment of the Hon'ble Apex Court in the case of Gaffar Badshaha Pathan Vs. State of Maharashtra, 2005 AIR SCW 3264, Shri Chatterji submitted that, by bringing on record the dying declaration of deceased Sangita recorded by DW-1 Satish Mule, wherein she has specifically stated to have accidentally burnt, the accused have sufficiently discharged the burden on them to prove their defence that, deceased Sangita did not suffer homicidal death, but died due to an accidental death. The learned Counsel submitted that, as has been observed by the Hon'ble Apex Court in the said Judgment, burden on the accused to prove the dying declaration is much lighter than on the prosecution. The learned Counsel submitted

that, the accused is only to prove the reasonable probability. The learned Counsel further submitted that, in view of the case attempted to be made out by the prosecution that, deceased Sangita suffered homicidal death and that it were the accused, who poured kerosene on her person and set her on fire, the probability of deceased Sangita suffering an accidental death has been reasonably proved by the accused by bringing on record and duly proving the dying declaration given by her on 07.12.1998 to DW-1 Satish Mule. In the circumstances, according to learned Counsel, the conviction of the accused cannot be sustained.

19. The learned Counsel also relied upon one more Judgment of the Hon'ble Apex Court in the case of P.V. Radhakrishna Vs. State of Karnataka, AIR 2003 Supreme Court 2859. Inviting our attention to the observations made by the Hon'ble Apex Court in para nos.13 & 14 of the said Judgment, the learned Counsel submitted that, unless the dying declaration is absolutely free from any doubt and inspires full confidence, the same cannot be acted upon to base the conviction of the accused. The learned Counsel submitted that, the impugned Judgment cannot be upheld in light of the principles laid down in the aforesaid Judgment of the Hon'ble Apex Court.

20. It was also the argument of the learned Counsel that, it was incumbent on part of the prosecution to explain the circumstances why a second dying declaration was required to be recorded of deceased Sangita, when on 07.12.1998 itself her declaration was recorded by DW-1 Satish Mule. In absence of any such explanation from the side of the prosecution, according to the learned Counsel, no reliance can be placed on the subsequent dying declaration recorded of the deceased. The learned Counsel had further submitted that, from the circumstances on record, it is so explicit that, the second dying declaration was the result of constant tutoring by the mother and father of deceased Sangita. The learned Counsel submitted that, it has come on record that, mother of deceased Sangita was all the while along with her. The learned Counsel submitted that, the possibility of the father and mother of deceased Sangita to have compelled deceased Sangita to give a statement falsely implicating the accused is difficult to be ruled out.

21. The learned Counsel further submitted that, the second dying declaration at Exh.42, otherwise also deserves to be ignored and discarded for the reason that, the prosecution has not brought on record any evidence showing that, while giving her such statement, deceased Sangita was in fit physical

and mental condition.

22. It was also the submission of the learned Counsel that, if the evidence of PW-2 Maruti Dagadu Nikam is to be believed that, deceased Sangita had disclosed to him that, she was being humiliated and tortured by accused persons on account of her inability to conceive and that was the reason that she was burnt by accused persons by pouring kerosene on her person, it would have been the natural conduct of PW-2 Maruti Dagadu Nikam to immediately approach the nearest Police Station and to lodge the report against the accused persons and he would not have waited till the death of deceased Sangita.

23. We have carefully perused the impugned Judgment. The learned trial Judge has disbelieved the dying declaration recorded by DW No.1 Satish Mule observing that, the statement so given to DW No.1 Satish Mule by deceased Sangita does not appear to have been given voluntarily and possibility that, the same was given under the pressure of the husband and mother-in-law cannot be ruled out. The second reason, which the learned Judge has assigned is that, the circumstances on the spot as well as the burn injuries caused to deceased Sangita have raised serious doubt whether such injuries could have been caused in an accident, stated to be happened because of flaring

of the stove. As has been observed by the learned trial Judge, burn injuries noticed to have been caused to deceased Sangita indicate the possibility of somebody pouring kerosene on her person. The learned Judge has recorded a conclusion that, it were the accused only who poured kerosene on person of deceased Sangita causing her burn injuries to the extent of 90%.

24. We have carefully perused the evidence of DW-1 Satish Mule as well as the evidence of other witnesses. We have examined the medical evidence on record. It is apparently revealed that, the conclusion recorded by the learned trial Judge that, when DW-1 Satish Mule had been to Civil Hospital for recording the statement of deceased Sangita, persons who were present near Sangita were all her relatives from the matrimonial side, is based only on surmises. There is nothing on record to show, who were the persons present near deceased Sangita at the relevant time and whether they were the relatives and if yes, whether from the matrimonial side or parental side. The further conclusion recorded by the learned trial Judge is also based on conjecture and does not have any factual base. We have also come across some of the observations made by the learned Special Judge, which are wholly unconscionable. In para 8, which runs in about 7 pages, at one place, the learned Judge has

made the following observations :

"It is an admitted fact that, deceased Sangita had been set on fire in her house at the matrimonial home, where she was residing with accused. It has been proved by the prosecution that, accused nos.1 and 2 had set her on fire **at the time of accident.**"

On what basis the learned Judge has recorded the aforesaid conclusion is not understood. When it is the specific defence of the accused that, deceased Sangita got accidentally burnt, the observation made by the learned trial Judge that, "it is an admitted fact that, deceased Sangita had been set on fire" appears wholly unconscionable. Further observation made by the learned Judge that, "it has been proved by the prosecution that, accused nos.1 and 2 had set her on fire at the time of accident" is more unconscionable. If according to the learned Judge catching fire by deceased Sangita was an accident, how the learned Judge has also observed that, accused nos.1 and 2 had set her on fire at the time of accident meaning thereby that Sangita suffered a homicidal death. Further, there is no direct evidence on record to show that, accused nos.1 and 2 set Sangita on fire. At least, we have not come across any such unimpeachable evidence to reach to any definite conclusion that, it were accused nos.1 and 2, who set on fire deceased Sangita, except the dying declaration at Exh.42, recorded by PW-5 Ashok Bhor, the reliability of which we will have to independently

examine hereinafter. We are, thus, unable to subscribe the reasons which are assigned by the learned trial Judge for rejecting the dying declaration at Exh.55 recorded by DW-1 Satish Mule.

25. Law is well settled that, in a case where there are more than one dying declarations, the truth should be judged with reference to all such dying declarations. In the instant matter, admittedly, there are two dying declarations one at Exh.42 and another at Exh.55. As noted by us earlier, it was vehemently argued by Shri Chatterji, learned Counsel appearing for the accused that, the approach of the Court should not be 'pick and choose', when there are two sets of dying declaration and there are variance on material aspects. Relying on the Judgment of the Division Bench of this Court in the case of Narendra s/o. Vitthalrao Hingane Vs. State of Maharashtra (cited supra), it was argued by Shri Chatterji that when the dying declaration at Exh.42 shows that, incident caused accidentally and the subsequent dying declaration at Exh.55 show otherwise and when there is no material to show any suspicious circumstance around the dying declaration at Exh.42, which absolve the accused, the benefit of doubt must go to the accused.

26. As against it, learned APP, Mrs Vaishali S. Chaudhari, placing her reliance on the another Division Bench Judgment of this Court in the case of Suresh Vishwanath Jadhav Vs. State of Maharashtra (cited supra) submitted that, the circumstances which are involved in the present case are as similar to the circumstances which were involved in the cited case. The learned APP submitted that, in the said matter also, two dying declarations were recorded and in first dying declaration the deceased had stated that, she got burnt due to bursting of stove and in second dying declaration she implicated her husband. The learned APP further submitted that, the Division Bench had in detail examined the evidence on record and had accepted the second dying declaration to be the truthful version of the deceased having regard to the other circumstances on record, more particularly, the situation on the spot of occurrence and nature of burn injuries caused to the deceased.

27. The learned APP submitted that, in the instant matter also, deceased Sangita in her first dying declaration has stated that, she got burnt due to bursting of stove and in the second dying declaration she has implicated her husband and the mother-in-law. The learned APP further submitted that, if the situation on the spot of occurrence is seen, the fact allegedly stated by deceased Sangita in her first dying declaration that,

she caught fire due to bursting of stove when she was cooking the food does not appear to be a truthful version. The learned APP submitted that, the spot panchanama does not depict that, around the stove some utensils were also noticed so that an inference can be drawn that, at the relevant time deceased Sangita was preparing food or has made preparation for cooking food. The learned APP submitted that, had it been the fact that, deceased Sangita was attempting to start the kerosene stove for the purpose of cooking and while doing so it got flared or burst and the kerosene was sprinkled on her person, around the said kerosene stove, it must have been noticed that, there were utensils required for cooking food and also the other essential articles like the vegetables, oil, flour, water etc. The learned APP submitted that, the spot panchanama does not show that any of such articles were noticed on the spot. The learned APP submitted that, situation at the spot completely rules out the story of the defence that, at the relevant time deceased Sangita was starting kerosene stove for cooking food.

28. The learned APP further submitted that, if the nature of burn injuries is considered, in no case, it can be accepted that, the said injuries could have been caused because of flaring of the stove. The learned APP submitted that, when deceased Sangita was burnt to the extent of 90%, the injuries so caused

to her indicate the possibility of only homicidal death and not accidental. The learned APP further submitted that, as has come on record in evidence of PW-2 Maruti Dagadu Nikam, deceased Sangita had disclosed to him that, her husband and mother-in-law poured kerosene on her person and set her on fire by picking quarrel with her on account of her inability to conceive. The learned APP submitted that, conjointly considering the facts stated in the aforesaid dying declaration by deceased Sangita, the situation as was existing on the spot and the testimony of PW-2 Maruti Dagadu Nikam, there remains no doubt that, deceased Sangita suffered a homicidal death and it were the accused, who set her on fire on the date of incident.

29. The learned APP submitted that, in the case of Suresh Vishwanath Jadhav Vs. State of Maharashtra (supra) the Division Bench of this Court had relied upon the second dying declaration considering the circumstances on record and in the instant case also the same course deserves to be followed and the conviction recorded by the learned trial Judge needs to be maintained.

30. As noted earlier, in absence of any cogent and sufficient evidence, though we are unable to agree with the finding recorded by the learned trial Judge that, the persons who

were present, when DW-1 Satish Mule had been to the hospital for recording the dying declaration of deceased Sangita, were the relatives of deceased Sangita from the matrimonial side and the dying declaration so given by deceased Sangita to DW-1 Satish Mule was thus under the pressure of the said relatives and more particularly of the accused persons and have also noted that, some of the observations made and conclusions recorded by the learned trial Judge are wholly unconscionable and have therefore rejected the same also, we find that some of the doubts raised by the learned APP in regard to the dying declaration at Exh.55 indicating that Sangita got accidentally burnt, are difficult to be ruled out.

31. From the situation as was existing on the spot of occurrence, it is difficult to accept the contention of the defence that, at the relevant time deceased Sangita was starting the kerosene stove for preparing the night meals and while doing so the said kerosene stove flared up because of which deceased Sangita caught the fire. Had it been the fact that, deceased Sangita was attempting to start kerosene stove for preparing the night meals, around the stove the essential articles like vegetables, water, oil, flour etc., and also the utensils for cooking the food must have been noticed around the said stove. Non existence of any of such article near or around the stove creates

serious doubt about the case of accidental death sought to be made out by the defence.

32. Similarly, looking to the nature and location of burn injuries all over the body of deceased Sangita and the percentage of the said burn injuries to the extent of 92% also create serious doubts about the theory of accident. Having regard to the fact that, back of deceased Sangita had also been completely burnt, the possibility of somebody pouring the kerosene on person of deceased Sangita is difficult to be ruled out. The C.A. Reports also spell out that, so far as the clothes of deceased Sangita, which were put for test for detection of kerosene, the kerosene residues were detected on all those clothes. As was submitted by the learned APP, the aforesaid circumstance apparently are indicative of somebody pouring kerosene on person of deceased Sangita and not of an accidental death.

33. After having considered the evidence as aforesaid, the fact allegedly stated by deceased Sangita in her dying declaration at Exh.55 that she got accidentally burnt as the kerosene stove flared up, appears to be quite doubtful and difficult to be accepted.

34. However, as because the story put forth by the defence that, deceased Sangita suffered accidental death is shrouded with doubts, merely on that basis it would be unsafe to hold the case of homicidal death as has been pleaded by the prosecution to have been proved. It will have to be closely scrutinized whether the evidence brought on record by the prosecution to prove that, deceased Sangita suffered homicidal death and it were the accused who knowingly and intentionally caused her death by pouring the kerosene on her person and setting her ablaze, is worthy of credence and whether the evidence so brought on record unimpeachably indicates the guilt of the accused and sufficiently proves the complicity of the accused in commission of the alleged crime.

35. In order to prove that, deceased Sangita suffered homicidal death and the accused are the culprits, the thrust of the prosecution is on the evidence in the form of dying declaration of deceased Sangita recorded by PW-5 Ashok Bhor and on the testimony of PW-2 Maruti Nikam, father of deceased Sangita. Medical and forensic evidence is equally placed reliance upon to prove the allegations against the accused persons. First, we would prefer to scrutinize the evidence as about the second dying declaration of deceased Sangita on record.

36. As has been deposed by PW-5 Ashok Bhor, at the relevant time he was working as the Special Executive Officer, at Ahmednagar and on 08.12.1998 police person of M.I.D.C. Police Station, Ahmednagar had been to him with a letter requesting him to record the dying declaration of deceased Sangita, who was stated to be admitted in Civil Hospital, Ahmednagar. During the course of his evidence before the Court, the said letter was duly proved and has been marked at Exh.40. As has been further deposed by PW-5 Ashok Bhor, he thereafter reached to Civil Hospital, Ahmednagar and met resident Medical Officer and informed him about the letter received to him from the police for recording the dying declaration of deceased Sangita. PW-5 Ashok Bhor has further deposed that, the said doctor then had examined deceased Sangita and informed him that, she was in a position to give her statement. It has also come on record in his evidence that, the said doctor had made an endorsement in his presence on one paper. The said paper was shown to the said witness during the course of his evidence before the Court and the same was marked at Exh.41. After having perused the said paper at Exh.41, PW-5 Ashok Bhor deposed that, the said paper bears the endorsement and the signature of the said doctor and it is the same document on which in his presence the endorsement was made by the said doctor. PW-5 also deposed that, he had obtained the endorsement/certificate of the said

resident Medical Officer on the letter addressed to him by the police, instead of taking the endorsement on the document of dying declaration because he forgot at that time to obtain the endorsement on the paper / document of dying declaration itself. It has further come on record in the evidence of PW-5 Ashok Bhor that, then he recorded the dying declaration of deceased Sangita in question and answer form. PW-5 Ashok Bhor also deposed that, in her dying declaration, deceased Sangita had stated to him that, her husband and mother in law set her on fire for the reason that, she was unable to conceive. PW-5 Ashok Bhor also deposed that, after the dying declaration so given by deceased Sangita was written by him, he read over the contents of the said declaration to deceased Sangita and she admitted the contents so recorded to be true and correct. PW-5 Ashok Bhor has further deposed that, he then obtained the left thumb impression of deceased Sangita on the said dying declaration and also made his signature on the said declaration evidencing that, the said declaration was made before him. The said dying declaration was shown to PW-5 Ashok Bhor during the course of his evidence before the Court and on perusal of the same, he had identified the said document and had stated that, the document so shown was the same declaration, which was in his hand writing and was bearing his signature and the office seal over it.

37. It was vehemently argued by the learned APP that, through the evidence of PW-5 Ashok Bhor the prosecution has fully proved the dying declaration given by deceased Sangita on 08.12.1998, wherein she has specifically disclosed that, accused nos.1 & 2 poured kerosene on her person and set her on fire. It was also argued by learned APP that, as has been deposed by PW-5 Ashok Bhor, deceased Sangita was certified to be fit for giving her statement by the resident medical doctor before recording her statement. It was also argued by learned APP that, nothing was brought on record through the cross-examination of PW-5 Ashok Bhor so as to discard or disbelieve his evidence. According to the learned APP, the dying declaration of deceased Sangita has been proved beyond reasonable doubts through the evidence of PW-5 Ashok Bhor and it alone was sufficient to hold the accused persons guilty for knowingly and intentionally causing the death of deceased Sangita by pouring kerosene on her person and setting her on fire.

38. It was also argued by the learned APP that, the objection raised by Shri Chatterji, learned Counsel for the accused that, since there was no endorsement on the dying declaration that, the declarant was in a fit physical and mental condition, no reliance can be placed on such dying declaration,

was liable to be rejected in view of the law laid down by the larger Bench of the Hon'ble Supreme Court consisting of Hon'ble Five Judges of the Supreme Court in the case of Laxman Vs. State of Maharashtra (cited supra). The learned APP submitted that, as has been held by the Hon'ble Apex Court, the mere fact that, the endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner if the Magistrate in his evidence states that, he had ascertained from the doctor whether she was in a fit condition to make a statement.

39. The submissions as were made by the learned APP were opposed by Shri Chatterji, the learned Counsel appearing for the accused, with equal vehemence. The learned Counsel inviting our attention to the document at Exh.41 submitted that, letter allegedly issued to the Medical Officer, Civil Hospital, Ahmednagar was not issued by PW-5 Ashok Bhor, but was admittedly issued by the Police Sub-Inspector of the M.I.D.C., Police Station. The learned Counsel submitted that, PW-5 Ashok Bhor has also admitted the said fact in his cross-examination. The learned Counsel further submitted that, such course was wholly impermissible and raises serious doubt whether in fact the endorsement as is appearing on the document at Exh.41 was made by the concern Medical Officer before recording of the

statement by PW-5 Ashok Bhor.

40. Inviting our attention to the F.I.R. in the matter, the learned Counsel submitted that, the said FIR is in fact a complaint given by deceased Sangita and the same has been recorded by the same PSI, under whose signature, the letter at Exh.41 was issued to Medical Officer of the Civil Hospital. The learned Counsel submitted that, there is every reason to believe that, on the basis of the endorsement made on Exh.41 said PSI had recorded the statement-cum-complaint of deceased Sangita. The learned Counsel submitted that, from the aforesaid evidence, it is quite clear that, the physical and mental fitness of deceased Sangita was not ascertained by PW-5 Ashok Bhor before recording the statement of deceased Sangita and the requisition at Exh.41, which was issued by PSI, M.I.D.C. Police Station before his recording the statement-cum-complaint of deceased Sangita has been malafide shown to be the requisition issued before recording the statement of deceased Sangita by PW-5 Ashok Bhor. The learned Counsel submitted that, reasonable doubts are certainly created whether the very essential requirement of ascertaining the fitness of deceased Sangita before recording her statement at Exh.42 was complied with or not.

41. The learned Counsel submitted that, the justification given by PW-5 Ashok Bhor in his testimony before the Court that, he forgot to obtain the endorsement on the paper / document of the dying declaration is quite improbable and unbelievable. The learned Counsel further submitted that, as has been deposed by PW-5 Ashok Bhor, he had obtained the endorsement / certification of the resident Medical Officer on the letter addressed to Medical Officer by police, instead of taking the endorsement on the paper of dying declaration. The learned Counsel submitted that, when as per his own contention, PW-5 Ashok Bhor had obtained the endorsement from the resident Medical Officer on the letter addressed to the said Medical Officer by police, instead of taking the endorsement on the paper of dying declaration, there appears no relevance in the further fact stated by PW-5 Ashok Bhor that, he forgot to obtain such endorsement on the paper of dying declaration. The learned Counsel further submitted that, the aforesaid conduct of PW-5 Ashok Bhor raises serious doubt about the facts stated by him that, he obtained the certification from the resident Medical Officer.

42. The learned Counsel further submitted that, PW-5 Ashok Bhor in his cross-examination has candidly admitted that, he at his own did not ascertain whether deceased Sangita was in

a position to give her statement. The learned Counsel submitted that, in view of the aforesaid admission given by PW-5 Ashok Bhor coupled with the fact that, the dying declaration recorded by him did not bear any endorsement from the Medical Officer certifying that, the declarant was in a condition to give her statement, there remains no evidence on record to show that, deceased Sangita was in a fit condition when she gave her statement to PW-5 Ashok Bhor. In the circumstances, according to learned Counsel no reliance can be placed on the dying declaration so recorded by PW-5 Ashok Bhor.

43. It was also the contention of the learned Counsel Shri Chatterji that, having regard to the medical evidence on record also the only inference which emerges is that, at the relevant time there was no possibility of deceased Sangita to be in a condition of giving her statement. The learned Counsel invited our attention to the cross-examination of PW-3 Dr. Bhaskar Nanasaheb Rananavre, wherein he has explained that, due to burn injuries, the blood becomes thick and resultantly the percentage of fluid from the blood goes on decreasing. It was also explained by PW-3 Dr. Bhaskar Rananavre that, oxygen supply to the brain is made through the fluid in the blood and if the fluid in the blood gets decreased because of the thickness of the blood, the person concern may

go in coma within 5 to 6 hours after his blood becomes thick. The learned Counsel invited our attention to the specific admission given by PW-3 Dr. Bhaskar Rananavre that, the injuries as were noticed on the dead body of deceased Sangita were suggestive of the possibility of her going in coma before recording her statement by PW-5 Ashok Bhor. The learned Counsel submitted that, the dying declaration stated to have been recorded by PW-5 Ashok Bhor, was admittedly recorded after the period of about 18 hours of receiving the burn injuries by deceased Sangita. In the circumstances, according to the learned Counsel, there was no possibility of deceased Sangita to be in a condition for giving her statement to PW-5 Ashok Bhor.

44. The learned Counsel further submitted that, even if it is assumed that, deceased Sangita was in a condition to give her statement to PW-5 Ashok Bhor, the further possibility of her being tutored by her mother and father is difficult to be ruled out. The learned Counsel submitted that, the evidence on record clearly suggests that, for whole of the period the mother and father of deceased Sangita were at her side in the Civil Hospital at Ahmednagar after they arrived in the night of 07.12.1998 till the death of deceased Sangita.

45. The learned Counsel further submitted that, there

are serious doubts whether the left thumb impression alleged to be obtained by PW-5 Ashok Bhor below the dying declaration at Exh.41 is of deceased Sangita. The learned Counsel submitted that, as has been stated by PW-3 Dr. Bhaskar Rananavre, deceased Sangita was burn from nail upto shoulder, and had suffered the deep burn injuries because of which the entire surface layer was burnt. Having regard to the said evidence, according to the learned Counsel, it was unbelievable that, deceased Sangita could have affixed her left thumb impression on the alleged dying declaration at Exh.42. The learned Counsel further submitted that, serious doubts are raised about the said thumb impression to be of deceased Sangita on one more ground that, no one including PW-5 Ashok Bhor has attested the said left thumb impression to be of deceased Sangita.

46. The learned Counsel further submitted that, there is no signature of PW-5 Ashok Bhor below the statement at Exh.42 as well as an endorsement that, he recorded the said statement according to the version of deceased Sangita. The learned Counsel further submitted that, the alleged signature of PW-5 Ashok Bhor on the alleged dying declaration at Exh.42 is at the left corner of the said dying declaration. Inviting our attention to the said signature, the learned Counsel submitted that, when the entire dying declaration is appearing to have been recorded in

blue ink, the signature of PW-5 Ashok Bhor is curiously in the black ink. The learned Counsel submitted that, as has been deposed by PW-5 Ashok Bhor, the alleged dying declaration at Exh.42 was recorded by him in his own hand writing. In the circumstances, according to the learned Counsel, serious doubts are created of the alleged signature of PW-5 on the said document in the different ink than used while recording the whole of the remaining statement and there is reason to believe that, PW-5 had subsequently made the said signature.

47. The learned Counsel further submitted that, the alleged dying declaration cannot be relied upon for one more reason that, a leading question was put to the declarant as to "तुम्हाला कोणी पेटवले किंवा जाळले?" which suggests that it was presumed by PW-5 Ashok Bhor that, it was a case of homicidal death. The learned Counsel also invited our attention to question no.12 in the said proforma dying declaration, which is to the effect "तुम्हाला जाळुन घेण्याचे / जाळण्याचे कारण काय?" The learned Counsel submitted that, the said proforma seems to have been prepared presuming that, the person whose statement has to be recorded in the said proforma is either set on fire by somebody or has himself or herself set on fire as an attempt of suicide. The learned Counsel submitted that, it would be very unsafe to rely upon the dying declaration recorded in

such a proforma.

48. The learned Counsel further submitted that, in the said dying declaration at Exh.42 deceased Sangita has not disclosed that, on the earlier day also someone has recorded her statement-cum-dying declaration and while giving said statement she was threatened by the accused to state that, she got burnt because of bursting of stove and that she was not having any complaint against anybody. The learned Counsel submitted that, in the case of Suresh Vishwanath Jadhav Vs. State of Maharashtra (cited supra), deceased therein while giving her second dying declaration had specifically disclosed the reason for not giving the names of the persons, who poured kerosene on her and set her on fire in her first dying declaration as she was threatened by them that, if she implicates their names, her small daughter would be killed. The learned Counsel submitted that, that was the main reason that, the Division Bench of this Court in the aforesaid matter find it expedient to rely upon the second dying declaration though there was on record first dying declaration wherein the deceased had stated that, she caught fire due to bursting of stove. The learned Counsel submitted that the aforesaid Judgment may not apply to the facts in the present case.

49. The learned Counsel submitted that, for all the aforesaid reasons, no reliance can be placed on the evidence brought on record by the prosecution in the form of the dying declaration of the deceased at Exh.42, which is shrouded with all serious doubts.

50. Various objections noted as above raised by Shri Chatterji, learned Counsel appearing for the accused, in regard to the dying declaration at Exh.42 deserve serious consideration since the learned trial Judge has based the conviction of the accused mainly on the basis of the said dying declaration.

51. There can be no dispute that, dying declaration can be the sole basis for conviction, however such a dying declaration has to be proved to be wholly reliable, voluntary and truthful and further that, the maker thereof must be in a fit medical condition to make it. It is not in dispute that, the dying declaration at Exh.42 does not bear any endorsement thereon by the Medical Officer as about the fitness of deceased Sangita to give her statement. Relying on the Judgment of the Hon'ble Apex Court in the case of Laxman Vs. State of Maharashtra (cited supra) though it was sought to be canvassed by the learned APP that, merely because an endorsement was made by

the Medical Officer not on the declaration, but on the application would not render the dying declaration suspicious in any manner, the law laid down in the aforesaid Judgment may not apply to the facts of the present case in view of the fact that, in the instant matter PW-5 Ashok Bhor in his evidence has not stated that, he himself had ascertained the fitness of deceased Sangita to give her statement before recording her statement. What has been stated by PW-5 Ashok Bhor in his evidence is the fact that, *"I had not ascertained myself about the condition of said patient as to whether she was in a position to give her statement. I had recorded the statement because doctor had certified that, she was in a position to give statement."* It is not in dispute that, the doctor who has allegedly certified deceased Sangita to be fit for giving her statement, has not been examined by the prosecution. Even the name of the said Medical Officer/ Doctor has nowhere been disclosed in the entire prosecution evidence.

52. In fact, the question arises as to why PW-5 Ashok Bhor did not issue the request letter to the concern Medical Officer in the Civil Hospital to certify whether deceased Sangita was in a fit condition to give her statement, before actually recording her statement. It is the normal practice that, when the declarant is in the hospital, it is the duty of the person recording the declaration to record the statement in presence of

the doctor and after being certified by the said doctor that, the declarant was in a fit state of body and mind to make the declaration. Besides, the person who records the dying declaration must satisfy himself that, the dying man/woman is making a conscious and voluntary statement and that his/ her understanding was normal. PW-5 Ashok Bhor has not provided any explanation as to why he himself did not issue the request letter to the concern Medical Officer. Had the said doctor been examined as a prosecution witness, no further question would have arisen. Since the said doctor has not been examined and as has been deposed by PW-5 Ashok Bhor, he himself had also not ascertained the fitness of deceased Sangita to give her statement, serious doubts are raised whether deceased Sangita was really in a fit condition to give her statement at Exh.42, when the same was recorded by PW-5 Ashok Bhor.

53. Further, the suo-motu explanation given by PW-5 Ashok Bhor for not obtaining the fitness of deceased Sangita by the Medical Officer on the dying declaration itself has created serious doubts as well as confusion. According to PW-5 Ashok Bhor, he recorded the statement only after obtaining the fitness of deceased Sangita, but the mistake he committed was that, he wrongly obtained the certification on the requisition issued to the Medical Officer by the police. It is thus evident that, PW-5 Ashok

Bhor did not forget to obtain the certification as deposed by him in his testimony before the Court, but he committed the mistake. The question is when did PW-5 Ashok Bhor realized that, he has forgotten or committed mistake in not obtaining the certification on the dying declaration; whether before recording of the statement or while recording the same or after recording was completed. In all these contingencies, PW-5 Ashok Bhor could have once again obtained the certification from the concerned Medical Officer on the dying declaration, even though earlier he had obtained the same on police requisition. Why such course was not adopted by him, has not at all been explained by PW-5 Ashok Bhor.

54. After having considered the facts as aforesaid, the doubt as has been raised on behalf of the accused that, the certification of deceased Sangita to give her statement as is existing on record at Exh.41 was not obtained before recording of the statement at Exh.42 and was not obtained by PW-5 Ashok Bhor, is difficult to be ruled out. The submission made by Shri Chatterji, learned Counsel appearing for accused that, the certification at Exh.41 was obtained by the PSI, who recorded the statement-cum-complaint of deceased Sangita, on the basis of which, the offence was registered against the accused treating the said complaint as FIR, does not appear improbable.

55. It is the requirement of law and also the established practice that, the dying declaration should be read over and explained to the declarant and declarant should admit the same to be correct, then there should be an endorsement to that effect on the dying declaration by the person, who recorded it. The dying declaration at Exh.42 nowhere bears any such endorsement by PW-5 Ashok Bhor, who is stated to have recorded the said dying declaration, to the effect that, he had read over the said dying declaration to deceased Sangita and that, deceased Sangita had admitted the same to be correct.

56. It is also rule of prudence that, after recording the dying declaration and reading over the same to the declarant and making the endorsement in that regard as mentioned in the para above, the person who records it has to obtain the signature or the thumb impression of the declarant, as the case may be, below the said dying declaration and attest the said signature or the thumb impression to be of the declarant by making specific endorsement in that regard. Perusal of the dying declaration at Exh.42 demonstrates that, the thumb impression alleged to be of deceased Sangita below the said declaration has not been attested by anyone including PW-5 Ashok Bhor, who is stated to have recorded the same.

57. It is further revealed that, there is no signature of PW-5 Ashok Bhor at the bottom of the declaration at Exh.42 or at the side of the alleged thumb impression of deceased Sangita. Ordinarily, the person, who records the dying declaration, is expected to sign the said declaration at its bottom and preferably at the side of the signature or the thumb impression as the case may be of the declarant. In the dying declaration at Exh.42, PW-5 Ashok Bhor has put his signature in the side margin of the said document and that too not at the bottom portion, but on the middle portion. It is further noticed that, though the entire other contents of the dying declaration at Exh.42 are written or scribed in blue ink, the signature of PW-5 Ashok Bhor is curiously in black ink. As deposed by PW-5 Ashok Bhor, he himself had written down the statement/declaration of deceased Sangita in his own hand writing and had put his signature thereafter.

58. From the fact that, the entire dying declaration recorded at Exh.42 by PW-5 Ashok Bhor when is in blue ink, signature of PW-5 thereon is in black ink, the doubt expressed by the defence that, the dying declaration at Exh.42 was not signed by PW-5 Ashok Bhor immediately after it was recorded by him, but was signed at some later point of time, cannot be said

to be improbable. This is an additional circumstance raising question mark about the genuineness of the dying declaration at Exh.42.

59. The objections raised by Shri Chatterji, learned Counsel for the accused, as about the format of the dying declaration at Exh.42 also cannot be said to be unreasonable. It is true that, the said format contains the leading questions. Question no.10, which reads as "तुम्हाला कोणी पेटवले किंवा जाळले?" (who ignited or set you on fire?) is undoubtedly presumptive. It presumes that, the person, whose declaration is to be recorded, has been burnt or set on fire by someone else meaning thereby that, it is the case of homicide. Question no.12, which reads as "तुम्हाला जाळून घेण्याचे / जाळण्याचे कारण काय?" (why for you burnt yourself/ Why for you were burnt ?) also presumes that, the person, whose statement has to be recorded in the said proforma, is either set on fire by somebody or has himself set on fire as an attempt of suicide. Thus, the possibility of the person receiving burn injuries by an accident is kept out of consideration. We are afraid to what extent it would be safe to rely upon the dying declaration recorded in such a printed proforma.

60. In the dying declaration recorded at Exh.42, deceased Sangita has admittedly not disclosed that, on earlier

day i.e. 07.12.1998 also, her dying declaration has been recorded and that, the facts stated by her in the said dying declaration that, she got burnt because of the bursting of stove and further that, she does not have any complaint against anybody, were stated by her under the pressure of her husband and mother-in-law since they had threatened her with her life, if she does not give such a statement.

61. In the case of Suresh Vishwanath Jadhav Vs. State of Maharashtra (cited supra), which was relied upon by the learned APP, the Division Bench of this Court relied upon the second dying declaration of the deceased making out a case of homicide though there was first dying declaration on record, wherein the deceased had stated that, she caught fire due to bursting of stove for the reason that, in her second dying declaration the deceased provided a reason for not implicating the name of her husband in the first dying declaration. The ratio laid down in the aforesaid Judgment, therefore, may not apply to the facts of the present case.

62. After having considered the discrepancies as above, we have no hesitation in our mind in observing that, the dying declaration at Exh.42 was impregnated with number of suspicious circumstances, which create doubts regarding the

genuineness of the said dying declaration. Such a dying declaration can hardly be sufficient as an unimpeachable document and according to us, it was quite unsafe to base the conviction of the accused on the basis of such evidence.

63. In the instant case, the version of homicide set up by the prosecution as well as the version of accident set up by the accused, both appear to be highly improbable and do not inspire confidence to believe either version. In this state of things, when two incredible versions confront us, we have to give benefit of doubt to the accused and it would be unsafe to sustain the conviction. The contradictions in the two dying declarations coupled with the other circumstances on record, leave us with no option but to attach little weight to these dying declarations. None of the dying declaration inspire confidence in its truthfulness and correctness so as to rely upon it. The conviction of the accused, based on such evidence, cannot be sustained.

64. Before parting with the Judgment, we are constrained to observe that, the manner in which the instant case was tried before the trial Court was highly objectionable. The prosecution did not examine any of the doctors, who were stated to have certified deceased Sangita to be fit for giving her statements, at Exh.55 and Exh.42. More worrying factor is that,

in such a serious matter, the Investigating Officer did not enter into the witness box. One Ramesh Kale, who was stated to have made an attempt of extinguish the fire around deceased Sangita and who was stated to have reached Sangita in the hospital, was an important witness who could have thrown light on the incident as it had occurred. The prosecution has not examined him. In absence of any corroboration to the facts as were deposed by PW-2 Maruti Dagadu Nikam, the father of deceased, it would have been very unsafe to hold the accused persons guilty for the offences, with which they were charged. In the circumstances, we reiterate that, the only option before us is to acquit the accused by giving them the benefit of doubt. Hence, the following order.

#### ORDER

- i) The Judgment and order dated 12.12.2002 passed by First Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No.23 of 1999 is quashed and set aside.
- ii) The appellants namely Prakash s/o Bhausahab Kale and Narmadabai w/o Bhausahab Kale are acquitted of all the charges levelled against them.
- iii) The bail bonds of the appellants – accused stand cancelled.

iv) The fine amount, if any, paid by the appellants –  
accused be refunded to them.

v) The Criminal Appeal thus stands allowed.

[ P.R. BORA ]  
JUDGE

[ SUNIL P. DESHMUKH ]  
JUDGE

ggpunde.