

2. Accused No.1 Deepak Lokhande died during the pendency of the trial, therefore accused No.2 Sunita @ Shama Deepak Lokhande and accused No.3 Shirubai Kamble were tried for the offence as referred above. In order to prove the guilt, the prosecution has examined 18 witnesses. Out of them, witnesses PW 1 Vilas, PW-2 Usman, PW-3 Balasaheb, PW-5 Santosh, PW-9 Balasaheb Shirsagar are the panch witnesses who turned hostile. Likewise witness PW-4 Sandip Agale also turned hostile. PW-6 Maya Patole deposed that wife of deceased namely Babita informed her that accused No.2 Shama set fire on her husband Sunil. PW-7 Dattatraya Bansode deposed that after the incident, he went to the hospital and saw that deceased Sunil was badly burnt. PW-10 Dr. Shriniwas Hambire conducted postmortem, PW-12 Kumar Ghadge conducted spot Panchanama, PW-13 Dr. Deshmukh and PW14 Dr. Satish Adatrao were medical officers who were present at the time of recording two dying declarations. PW-15 Sunil Ghadge and PW-18 Sanjay Kulkarni are the Investigating Officers. Evidence of the above witnesses is not relevant to establish the guilt of the accused persons.

3. Relevant witnesses are PW-16 Babita Mhaske is wife of

deceased and PW-17 Sonu Dange is brother of deceased. Both them have deposed that deceased Sunil, after the incident had disclosed the names of the accused persons who set him on fire. Looking to their oral evidence, it appears that their evidence is not consistent with each other.

4. It seems from the record that prosecution has mostly relied upon two dying declarations Exh.33 and Exh. 39. Exhibit 39 is recorded by Police Constable Hanumant Kolangade. He deposed that he has recorded the statement of deceased. On perusal of the same, it appears that it was recorded on 15.05.2011 at 6.00 am, which was first in time. In first dying declaration Exh.39, it was stated that Deepak Lokhande caught hold him and taken him to his home and his wife poured kerosene on her person and set him on fire as there was illicit relations between him and Sunita. Second dying declaration Exh.33 was recorded by Executive Magistrate PW-8 Deshpande on 15.05.2011 at about 10.05 a.m. in which declarant Sunil has stated that accused nos. 1 to 3, Deepak Lokhande, Sunita Lokhande and Shirubai Kamble poured kerosene on his person and set him on fire. In the second sentence, he has stated that Sunita Lokhande set him on fire. So looking to the two dying declarations recorded by the prosecution, it appears that those are

inconsistent in material particulars. In the dying declaration Exh.33 at the first instance, deceased Sunil has stated that accused persons have poured kerosene on his person and set him on fire and in second sentence, he stated that Sunita set him on fire. This dying declaration is quite contrary to dying declaration Exh.39, wherein, declarant Sunil has stated that Deepak caught him and taken him into his house and then his wife Sunita set him on fire. There is serious infirmity in two dying declarations and therefore, reliance cannot be placed on the said dying declarations.

4. We have gone through the reasons recorded by the learned Sessions Judge, it appears that learned Sessions Judge has properly marshaled the evidence on record and has arrived at correct conclusion. Hence, no arguable case is made out.

5. In view of the above, the application is liable to be dismissed and accordingly, it is dismissed.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC