

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 724 OF 2015

1. Dayanand s/o. Shivdas Rajmane,
Age-24 Yrs. Occu: Agriculture
R/o. Nalegaon, Tq. Chakur,
Dist. Latur.
 2. Harnabai @ Harubai w/o. Shivdas
Rajmane,
Age-45 years, Occu. Household,
R/o. Nalegaon, Tq. Chakur,
Dist. Latur.
- ...Appellants
(Orig. Accused)

Versus

The State of Maharashtra

...Respondent

...
Mr. Joydeep Chatterji, Advocate h/f Mr. Amit A. Yadkikar, Advocate for the
Appellants.
Mr. D.R. Kale, APP for the respondent-State.
...

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 06.07.2018**

**Date of pronouncing
the Judgment : 03.08.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. This Appeal is filed by the appellants-accused, challenging the judgment and order passed by the III Additional Sessions Judge, Latur, on 06.08.2015 in Sessions Case No.68 of 2012, thereby convicting the appellants for the offence punishable under Sections

302 r/w.34 of the Indian Penal Code and sentencing them to undergo imprisonment for life and to pay fine of Rs.1,000/- [Rs. One Thousand only], in default, to undergo further R.I. for two months. The appellants are further convicted for the offence punishable under Section 498-A r/w.34 of the Indian Penal Code and sentenced to undergo R.I. for two years and to pay a fine of Rs.500/- [Rs. Five Hundred only], in default, to undergo further R.I. for two months.

2. The prosecution case in nutshell is as under:

The appellants – accused are residents of Nalegaon, Taluka Chakur, District Latur. Poonam [deceased] was the wife of accused Dayanand. They were married on 22.05.2011. On 17.01.2012 in the morning, the deceased Poonam sustained burns in her house. She was taken to Lahane Hospital, Latur, having sustained 72% burns. She was admitted in the Lahane Hospital and intimation was given to the Police Station, Shivaji Nagar, Latur regarding her admission in the said Hospital. A.S.I. Venkat Poul of Shivaji Nagar Police Station went to the Lahane Hospital and recorded the statement of Poonam between 3.10 p.m. to 3.50 p.m. Poonam stated in the said statement that she was pregnant of six months. On 16.01.2012, accused Dayanand had told her that the child in her womb was not from accused Dayanand. She stated that after two months of their marriage, accused Dayanand used to suspect about her character.

Accused nos.2 and 3, namely Harnabai @ Harubai Shivdas Rajmane and Deepali Shivshankar Usturge, used to poison the ears of accused Dayanand. She also stated that on 17.01.2012, accused Dayanand poured kerosene on her person and accused no.2 Harubai had burnt her by match stick. A.S.I. Poul sent the said statement to the Police Station, Chakur. On the basis of the said statement, Crime No.12/2012 for the offence punishable under Section 307 r/w. 34 of the Indian Penal Code came to be registered at Chakur Police Station, District Latur.

3. A.S.I. Poul had also given intimation to the Naib Tahsildar, Latur, namely, Vilas Jogdand to record the statement of Poonam. The Naib Tahsildar recorded the statement of Poonam between 4.00 p.m. to 4.30 p.m. on 17.01.2012. In the said dying declaration also, Poonam stated that the accused Dayanand was suspecting about her character and accused nos.2 and 3 i.e. Harnabai @ Harubai and Deepali were poisoning his ears. On 17.01.2012, the accused Dayanand had poured kerosene on her person and accused Harnabai @ Harubai had set her on fire. A.S.I. Venkat Poul sent the said dying declaration to the Police Station, Chakur on 23.01.2012. At the time of recording of the above mentioned two dying declarations, Poonam was examined by the Doctor Ashok Dake, who was attending her.

4. After registration of the crime, the investigation was entrusted to the P.S.I. namely B.S. Punjarwad, who prepared the spot panchnama on 18.01.2012. He recovered one can, pieces of burnt saree and one match box from the spot of incident. He recorded the statements of the witnesses. The deceased Poonam succumbed to burns on 23.01.2012 and the offence under Section 302 of the IPC was included and the offence under Section 307 of the IPC was deleted. The inquest panchnama of the dead body of the deceased Poonam was prepared and the post mortem on the body of deceased was conducted, which revealed that she died due to septicemia due to burns. The viscera of Poonam was sent to Pathology Department of Civil Hospital, Latur. The seized can, match box and pieces of burnt saree as well as another viscera of Poonam were sent to Chemical Analyzer. After completion of the investigation, the charge-sheet came to be filed.

5. The learned 3rd Additional Sessions Judge framed charge under Section 498-A r/w. 34 of IPC against all the accused persons and under Section 302 r/w. 34 of IPC against accused Dayanand and Harnabai @ Harubai. The charge was read over and explained to the accused in vernacular. They pleaded not guilty to the charge and claimed to be tried. Their defence is of total denial. They filed their written statement [Exh.67] under Section 313 of the Criminal

Procedure Code. They contended that before marriage, accused Dayanand was working as Tailor in Pune. However, as he was the only son of his parents, he started working at Nalegaon. Deceased Poonam was desiring to settle in Pune. They have further submitted that on the occasion of first Sankranti, Poonam had told her father to take her to her maiden house. However, her father had not taken her to his house and hence Poonam was annoyed.

6. To prove the charge against the accused, the prosecution has examined in all eight witnesses. Learned 3rd Additional Sessions Judge, Latur by judgment and order dated 6.8.2015 convicted the appellants-original accused Nos. 1 and 2 for the offence punishable under Section 302 r.w. 34 of the I.P.C. and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/- in default, to undergo further R.I. for two months. The appellants are further convicted for the offence punishable under Section 498-A r/w.34 of the I.P.C. and sentenced to undergo R.I. for two years and to pay a fine of Rs.500/-, in default, to undergo further R.I. for two months. The learned Judge of the trial court has directed that all substantive sentences shall run concurrently.

7. The learned counsel for the appellants-original accused Nos.1 and 2 submits that the learned 3rd Additional Sessions Judge, Latur

has recorded the findings of conviction contrary to the evidence on record. The learned Judge of the trial court has not considered the evidence of the father of deceased Poonam, P.W.3 Baswaraj Karbhari, who has deposed that death of deceased Poonam was suicidal and she was not in conscious state of mind to give alleged dying declarations. Learned counsel for the appellants submits that P.W.4 Dr. Ashok Dake, who was the treating doctor of deceased Poonam, has deposed that condition of deceased Poonam was very critical and she was given oxygen support at the rate of 2 liters per minute immediately since her admission in the hospital and as such, it was impossible for deceased Poonam to give dying declarations, as alleged. Learned counsel submits that the trial court has failed to appreciate that deceased Poonam, who had sustained burns to the extent of 72%, was put on oxygen support at the rate of 2 liters per minute to talk about 70 minutes continuously while recording her two successive dying declarations. P.W.4 Dr. Ashok Dake has admitted in his cross examination that he was on duty from the moment when deceased Poonam was admitted in hospital and on that day his duty was up to 5.00 p.m. and during this entire period deceased Poonam was being given oxygen. If it is being so, it was impossible for deceased Poonam to give any statement when oxygen mask was put to her mouth. The learned counsel submits that trial court has failed to appreciate that there was material discrepancy in the two dying

declarations of deceased Poonam. The prosecution has utterly failed to prove the motive behind the crime.

Learned counsel for the appellants, in order to substantiate his contentions, placed reliance on the following judgments:-

- i) *Kamalakar Nandram Bhavsar and others vs. State of Maharashtra, reported in 2004 Cri. L. J. 615,***
- ii) *Tukaram Dashrath Padhen and others vs. State of Maharashtra, reported in 2013 (1) Crimes 326 (Bom.) and***
- iii) *Sunil and others vs. the State of Maharashtra, reported in MANU/MH/2502/2015.***

8. Learned A.P.P. for the respondent State submits that P.W.3 Baswaraj Karbhari, who happened to be father of deceased Poonam has not supported the prosecution case and he had resiled from his earlier statement. Thus, the prosecution has sought permission from the court to cross examine the said witness and after grant of permission, P.W.3 Basawraj Karbhari was subjected to cross examination at length by the prosecution. Learned A.P.P. submits that P.W.3 Baswaraj has not stated the truth before the trial court and denied to have stated the portion marked "A" and "B" of his police statement. Learned A.P.P. submits that P.W.5 A.S.I. Venkat Poul has recorded the statement/dying declaration of deceased Poonam

Exh.42 in between 3.10 p.m. to 3.50 p.m. on 17.1.2012 and thereafter P.W.6 Naib Tahsildar, Vilas Jogdand has recorded the dying declaration of deceased Poonam at Exh.48 in between 4.00 p.m. to 4.30 p.m. It has come in the evidence of prosecution witnesses that deceased Poonam was admitted in the hospital around 11.00 a.m. and the intimation about sustaining burns by deceased Poonam was given to the concerned police station and it was received by the said police station at about 2.05 p.m. The learned A.P.P. submits that immediately after the incident, on the same day within some hours, both the dying declarations Exh.42 and 48, respectively, came to be recorded after examination of deceased Poonam by the concerned Medical Officer on his certification that she was able and conscious to give her statement. Learned A.P.P. submits that both the dying declarations Exh.42 and 48 respectively are consistent on its material part. The prosecution has examined P.W.4 Dr. Ashok Dake, who has made endorsement on both the dying declarations and certified about conscious state of mind of deceased Poonam while recording her dying declarations. Learned A.P.P. submits that there is no specific cross examination to P.W.4 Dr. Ashok Dake that at the time of recording of dying declarations Exh. 42 and 48 respectively, deceased Poonam was put on oxygen mask. Even there is no entry about oxygen being provided to deceased Poonam in the admission and treatment papers. Learned

A.P.P. submits that the trial court has rightly convicted both the appellants.

9. The prosecution case rests upon two dying declarations. P.W.5 A.S.I. Venkat Poul has recorded statement/dying declaration of deceased Poonam Exh.42 in between 3.10 p.m. to 3.50 p.m. and thereafter P.W.6 Naib Tahsildar Vilas Jogdand has recorded dying declaration of deceased Poonam at Exh.48 in between 4.00 p.m. to 4.30 p.m. P.W.4 Dr. Ashok Dake has made endorsement about conscious state of mind of deceased Poonam on both the dying declarations.

10. The Supreme court in several judgments, has laid down the principles governing the dying declarations. It is well settled that once the court is satisfied that the declaration was true, 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. The Supreme Court, in the case of **P. V. Radhakrishna** vs. State of Karnataka, reported in AIR 2003 SC 2859 in paragraph nos. 11, 12 and 13 of the judgment, has made the following observations:

"11. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in R. vs. Wood Cock (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding

himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

*"Have I met hideous death within my view, Retaining
but a quantity of life, Which bleeds away, Even as a
form of wax, Resolveth from his figure, Against the fire?
What is the world should Make me now deceive. Since I
must lose the use of all deceit? Why should I then be
false. Since it is true That I must die here, Live hence
by truth?"*

(See King John, Act 5, Sect.4)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri – a man will not meet his maker with a lie in his mouth."

12. This is a case where the basis of conviction of the accused is the dying declaration. 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.

13. 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.....”

11. In the light of above observations made by the Supreme court, the acceptability of the dying declaration in the instant case as referred above, is required to be considered. P.W.3 Baswaraj Karbhari, father of deceased Poonam, though not supported the prosecution case, in para 3 of his cross examination by the A.P.P. for the State, stated that he got the information regarding burning of Poonam on 17.1.2012 and on that day at about 5.00 p.m. he himself and his wife had been to Lahane Hospital and met Poonam. It is well settled that evidence of hostile witness is not to be totally discarded and the admission part of his statement can be used by the prosecution or the defence. Both the dying declarations Exh.42 and Exh.48 came to be recorded before 4.30 p.m. Consequently, there is no material to show that the aforesaid dying declarations were the product of imagination, tutoring or prompting.

12. We have carefully examined the evidence of P.W.5 A.S.I.

Venkat Poul who has recorded statement/dying declaration of deceased Poonam at Exh. 42 and P.W.6 Naib Tahsildar, Vilas Jogdand who has recorded the statement/dying declaration of deceased Poonam at Exh.48. On 17.1.2012, when P.W.5 A.S.I. Venkat Poul was present in Shivaji Nagar police station, Latur on that day at about 2.05 p.m. one M.L.C. Letter was received from Lahane Hospital, Latur informing therein that one Poonam was admitted in the said hospital in burnt condition. The investigation of case was entrusted to him. The aforesaid M.L.C. Letter received from Lahane Hospital is marked at Exh.38. P.W.5 A.S.I. Venkat Poul thereafter went to the said hospital and met P.W.4 Dr. Ashok Dake and at his request P.W.4 Dr. Ashok Dake had examined Poonam and certified that she was in good condition and was able to talk. P.W.4 Dr. Ashok Dake also told P.W.5 A.S.I. Venkat Poul that he could record the statement of deceased Poonam. Thereafter, P.W. 5 A.S.I. Venkat Poul introduced himself to deceased Poonam and explained to her that he has come there to record her statement. Deceased Poonam had shown her readiness to give her statement. P.W. 5 A.S.I. Venkat Poul has deposed that deceased Poonam told him that she was carrying pregnancy of seven months and from 2 months after the marriage, the appellant/accused no.1 used to harass her by suspecting about her character. Deceased Poonam also told him that sister of accused Dayanand viz. Deepa and accused No.2 Harubai

(mother in law of deceased) were also poisoning ears of accused No.1 against her. Deceased Poonam explained that on 17.1.2012 at about 9.00 a.m. when she was performing Pooja, her husband accused No.1 poured kerosene on her person and accused No.2 mother in law set her on fire with the help of matchstick. She also told that she ran out of house towards veranda, shouting for help and thereafter some people extinguished the fire by pouring water on her person. P.W.5 A.S.I. Venkat Poul has explained that at the time of recording her statement, he himself, P.W. 4 Dr. Ashok Dake and deceased Poonam were present. Deceased Poonam had also put her signature on the dying declaration at Exh.42. Dying declaration Exh.42 is in the hand writing of P.W.5 A.S.I. Venkat Poul and it bears his signature. There is an endorsement of concerned doctor to the effect that the patient was conscious and well oriented while recording the complete statement. The endorsement bears the signature of PW.4 Dr. Ashok Dake and date is 17.1.2012 in between 3.10 p.m. to 3.50 pm. On the basis of the statement/dying declaration Exh.42, crime No. 12 of 2012 for the offences punishable under Sections 307, 498-A r.w. 34 of I.P.C. came to be registered in the concerned police station and there is endorsement to that effect on the statement/dying declaration Exh.42.

13. We have carefully examined the evidence of P.W.6 Naib

Tahsildar, Vilas Jogdand and the contents of the dying declaration Exh.48. P.W.6 Naib Tahsildar Vilas Jogdand has deposed that on 17.1.2012 he had received a requisition for recording statement of Poonam Dayanand Rajmane, who was admitted in the Lahane Hospital, Latur. He had received the said letter at 2.45 p.m. Accordingly, he went to Lahane Hospital at 3.45 p.m. P.W.4 Dr. Ashok Dake was on duty there. He had taken opinion of Dr. Ashok Dake. Thereafter P.W.6 Naib Tahsildar, Vilas Jogdand had examined Poonam in his presence and found that deceased Poonam was fit and conscious to give statement and made an endorsement to that effect. P.W.6 Naib Tahsildar, Vilas Jogdand thereafter has disclosed his identity to deceased Poonam and asked her name and age etc. P.W.6 Naib Tahsildar, Vilas Jogdand further deposed that deceased Poonam disclosed to him that her husband was suspecting about her character. On the day of incident, when she was performing Pooja, her husband had poured kerosene on her person and her mother in law had set her on fire with the help of match stick. Thereafter she ran away from the house shouting for help and the neighbours extinguished the fire by pouring water on her person. On perusal of dying declaration Exh.48, we find on top of it an endorsement of P.W.4 Dr. Ashok Dake about the conscious state of mind of deceased Poonam which bears his signature and also the date 17.1.2012 and timing 4.00 p.m. The dying declaration Exh.48 bears

signature of deceased Poonam and also bears signature of P.W.6 Naib Tahsildar Vilas Jogdand, as deposed by him. Even below the dying declaration Exh.48 there is one more endorsement of P.W.4 Dr. Ashok Dake about fit and conscious state of mind of deceased Poonam till completion of recording of her dying declaration. The said endorsement bears signature of P.W.4 Dr. Ashok Dake with date and timing as 17.1.2012 at about 4.30 p.m.

14. We have also carefully examined the evidence of P.W.4 Dr. Ashok Dake. He was present at the time of recording of both the dying declarations Exh.42 and 48. At the time of recording of both the dying declarations, he has examined deceased Poonam and found that she was in conscious state of mind and he had made endorsement to that effect on both the dying declarations Exh.42 and 48 which bear his signatures.

15. Learned counsel for the appellants accused has assailed the aforesaid evidence mainly on the ground that P.W.4 Dr. Ashok Dake has admitted in his cross-examination that deceased Poonam was being given oxygen support since her arrival in the hospital till P.W.4 Dr. Ashok Dake left the hospital at about 5.00 p.m. and in such circumstances it is difficult to believe that deceased Poonam could have made dying declarations when she was not even capable by

breathing by herself. Learned counsel, in order to substantiate his contentions, placed reliance on the judgment of the Supreme court in the case of **Kamalakar Nandram Bhavsar and others vs. State of Maharashtra** (supra). The Supreme Court, in para 7 of the above cited case, has made the following observations:-

“7. So far as the genuineness of dying declaration is concerned, having perused the material on record, we are also satisfied that the said document is not a genuine document. Until PW-5 the doctor who conducted the post mortem was examined, the defence did not, in any manner, indicate or disclose the factum of the existence of a dying declaration. No suggestion was put to the other prosecution witness as to the existence of a dying declaration. It is very surprising that a doctor who admittedly did not treat a patient during her life time would be called upon to certify the fitness of the patient to make a dying declaration when other doctors who treated the said patient were available for the said purpose. From the evidence on record also, it is clear that the deceased was in no condition to make a dying declaration. She had almost 95% burns and she was put on oxygen right from the moment she was brought to the hospital and continued to be on oxygen till she died. In such circumstances, it is difficult to believe that she could have made a dying declaration when she was not even capable of breathing by herself. The evidence on record shows that she died within about half an hour after making the alleged dying declaration. All these circumstances leads to one and the only conclusion that this dying declaration is not a genuine document and the High Court was justified in rejecting the same on that basis.”

In the facts of the said case, the deceased had almost 95% of

burns and died within half an hour after making alleged dying declaration, coupled with some other circumstances including oxygen was being administered to the deceased prior to recording of her alleged dying declaration, the Supreme court held that the dying declaration is not a genuine document.

16. In the instant case, in our considered opinion, the dying declarations Exh.42 and 48 appear to have been made by deceased Poonam voluntarily. They are trustworthy and have credibility. Both the dying declarations inspire confidence of the Court for implicit acceptance. P.W.4 Dr. Ashok Dake has stated in his cross examination about oxygen being administered to deceased Poonam right from her arrival in the hospital at about 11.00 a.m. till he left the hospital at about 5.00 p.m. on that day. P.W.4 Dr. Ashok Dake has also admitted that there is no endorsement regarding oxygen being administered to deceased Poonam in the case paper maintained by the hospital. However, except this admission, there is no further specific cross examination of P.W.4 Dr. Ashok Dake as to impossibility of giving dying declaration when oxygen was being administered to deceased Poonam. In the facts of the above cited case of ***Kamalakar Nandram Bhavsar***, deceased died within half an hour after making alleged dying declaration whereas in the instant case, deceased Poonam died on 23.01.2012. P.W.4 Dr. Ashok Dake

has specifically deposed that he had examined deceased Poonam before recording both the dying declarations and on examination, he found that deceased Poonam was conscious and well oriented throughout while recording her dying declaration. It has also come in the evidence of P.W.5 A.S.I. Venkat Poul and P.W.6 Naib Tahsildar Vilas Jogdand and also P.W.4 Dr. Ashok Dake that all of them had asked certain questions to deceased Poonam and she had answered their questions, though formal in nature.

17. In view of this we are not inclined to give importance to the said admission on the part of P.W.4 Dr. Ashok Dake about oxygen being administered to deceased Poonam and draw an inference on its basis that deceased Poonam was not in a position to make dying declaration as she was not even capable of breathing by herself.

18. In the other two cases ***Tukaram Dashrath Padhen*** (supra), and ***Sunil and others*** (supra) relied upon by learned counsel for the appellants/accused, in the facts of the aforesaid cases, the Division Bench of this Court found that the dying declarations on record do not inspire confidence and accordingly extended the benefit of doubt to the appellant accused therein. In our opinion, both the cited cases cannot be made applicable to the facts and circumstances of the present case.

19. In the instant case we find both the dying declarations Exh.42 and 48 reliable, trustworthy and voluntarily made by deceased Poonam and the same inspire confidence. Deceased Poonam had sustained 67% of burns. P.W.8 Dr. Vikas Mahadeo Kumare, who has conducted post mortem examination, has given details of the percentage of burns spread on the parts of body of deceased Poonam with sparing area of body. The distribution of burns on the body of deceased Poona is described by Dr. Vikas Kumare, as follows:-

“Superficial to deep burns present on body at places. Yellow coloured pulse pockets with yellow slough present on area with smelling. Distribution of burns on the body as follows:-

- | | | |
|------|---|-------|
| i) | On neck region sparing face
partial singeing present on frontal
and partial scalp hair. | : 2% |
| ii) | At right elbow joint, sparing rest
of the right upper limb. | : 1% |
| iii) | On the left upper limb, sparing
upper part of arm. | : 8% |
| iv) | On anterior trunk, sparing upper
part of chest. | : 14% |
| v) | On posterior trunk, sparing upper
part of back of chest and partial
lumber region. | : 10% |
| vi) | On right lower limb, sparing dorsal
and planter region of foot. | : 16% |
| vii) | On left lower limb, sparing dorsal
and planter region of foot. | : 16% |

The total percentage of burns was 67%. Injection mark was present on right supra calvicular region margines reddish brown. All the above injuries were ante mortem.”

20. Deceased Poonam died on 23.1.2012 and post mortem was conducted on 24.1.2012. Deceased Poonam had put her signatures on both the dying declarations at Exh.42 and 48 respectively. As per post mortem notes Exh.58, the burns were found only at right elbow joint, sparing rest of the right upper limb. In view of the same, in our considered opinion, both the dying declarations Exh.42 and 48, inspire full confidence in its correctness and there is no possibility of either tutoring, prompting or that they were the product of imagination. There is no need of any further corroboration. Both the dying declarations Exh.42 and 48 are consistent on material point. There is no legal impediment to make it the basis of conviction. In the facts of the present case, the trial court is justified in placing reliance on the dying declarations Exh.42 and 48 for the purpose of convicting the appellants. We find no infirmity in the judgment and order passed by the trial court. The criminal appeal is hereby dismissed, accordingly.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

rlj/