

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

CRIMINAL APPEAL NO. 437 OF 2013

Balu @ Ramrao s/o Vilasrao Pole
Age 24 years, Occ. Agriculture,
R/o. Jalalddhaba,
Tq. Aundha (N), District Hingoli
(Appellant is in jail custody)

...Appellant

versus

The State of Maharashtra
Through Police Station Officer,
Police Station Kalamnuri,
District Hingoli,
(Copy served upon P.P. Of
High Court of Bombay
at Aurangabad)

...Respondent

.....

Mr. S.S. Rathi, advocate for the appellant
Mrs. V.N. Patil Jadhav, A.P.P. for respondent-State

.....

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

**Date of Reserving
the Judgment : 16.07.2018**

**Date of pronouncing
the Judgment : 06.08.2018**

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

1. The challenge in this appeal is to the judgment of conviction dated 30.09.2013 passed by the learned Additional

Sessions Judge, Basmath in Sessions Trial No. 46 of 2012 for the offences punishable under Sections 498-A and 302 of I.P.C., thereby sentencing the appellant/original accused No.1 to suffer R.I. for one year with fine of Rs.2000/-, in default to suffer R.I. for one month and imprisonment for life with fine of Rs.3000/-, in default to suffer R.I. for one month, respectively.

2. The prosecution version, as unfolded during trial, is as under:-

a. On 04.06.2012 at about 4.30 a.m., the appellant/accused No.1 (husband of deceased) phoned to P.W.2 Sarjerao (father of deceased) and informed him that his daughter Renuka (deceased) was caught by fire as one small kerosene lamp fell on her person and she was being taken to the Rural Hospital, Aundha (N). Accordingly, P.W.2 Sarjerao, P.W.4 Atul (brother of deceased) and other relatives of Renuka went to the Hospital at Aundha (N). By that time, Renuka was already shifted to Civil Hospital, Nanded and she was under medical treatment. When P.W.2 Sarjerao, P.W.3 Kaweribai (mother of deceased) and P.W.4 Atul met Renuka at the hospital, at that time she made

oral dying declarations to these three persons separately and narrated that accused No.1 poured kerosene on her person and set her on fire. On 04.06.2012 itself, at about 1.00 p.m., dying declaration of Renuka came to be recorded by P.W.5 Sunil Machewad, Naib Tahsildar at Civil Hospital Nanded. Thereafter, at 3.00 p.m, Renuka was shifted to Adhar Hospital, Nanded. On 05.06.2012 at about 11.00 a.m., P.W.6 Govind Munjaji Bhokkarkar, Police Head Constable recorded dying declaration of Renuka at Adhar Hospital, Nanded. On 11.6.2012 while under treatment, Renuka succumbed to burn injuries. Initially, offence was registered against the accused persons under sections 307 r.w. 34 of IPC. However, after death of Renuka, charge under Sections 302 and 498-A of IPC was added. The learned Additional Sessions Judge, Basmath framed charges against in all five accused persons including the present appellant/accused no.1 for the offence punishable under Sections 302 and 498-A of IPC. All accused persons pleaded not guilty to the charges and claimed to be tried. The prosecution has examined in all 12 witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial and false implication.

b. The learned Additional Sessions Judge, Basmath, upon considering the evidence of prosecution witnesses as well as documentary evidence on record, found that the prosecution evidence as against accused No.2 to 5 is not sufficient and acquitted them of the offences punishable under Sections 498-A and 302 of IPC, however, convicted the appellant-original accused No.1 Balu @ Ramrao s/o Vilasrao Pole for the aforesaid offences.

3. Learned counsel for the appellant/accused no.1 submits that the conviction recorded by the learned Sessions Judge is on the basis of two inconsistent dying declarations at Exhibits 32 and 35 respectively. There are material inconsistencies and variation in the two dying declarations. The trial court has accepted one statement and discarded another while convicting the present appellant. When inconsistent statements are there at the instance of prosecution, then in that circumstances benefit of the same should have been given to the present appellant. Learned counsel submits that prosecution has miserably failed to prove its case beyond reasonable doubt and as such the order of conviction and sentence of the appellant is not at all sustainable

in the eyes of law. The learned Judge has erroneously relied upon dying declaration Exh.32 recorded by P.W.5 Naib Tahsildar Sunil Machewad. He has admitted that at the time of recording of actual dying declaration nobody was present near the victim, including the doctor P.W. 7 (Dr. Umare) who had certified that, deceased was conscious and well oriented throughout. If P.W.7 Dr. Umare was not present while recording the dying declaration, then the second endorsement made by him about the deceased being in conscious state of mind is of no significance and needs to be ignored, more so, when it was made in the margin and tried to be inserted in between two paragraphs. As regards the first endorsement made by P.W.7 Dr. Umare on the dying declaration Exhibit 32, the learned counsel submits that as per his evidence, he made the first endorsement on a blank paper when nothing was written of the same. However, upon perusal of Exhibit 32, it can be seen that his first endorsement appears after 8-10 lines in between two paragraphs. This creates doubt about actual recording of dying declaration and also about the condition of patient before or at the time of recording of the same. There is also no reference in the dying declaration Exhibit 32 about the statement being read

over to the patient and contents being admitted by her. An endorsement to that effect has been put later on. The said dying declaration is full of doubts and no mandatory compliance for recording of the same was made.

4. Learned counsel for the appellant also assails the dying declaration Exhibit 32 by submitting that as per the evidence of P.W.5 Naib Tahsildar Sunil Machewad, it was recorded between 1.00 p.m. to 1.30 p.m. when nobody was present near Renuka. At the same time, father of deceased Renuka P.W.2 Sarjerao has specifically and categorically stated that he reached the hospital by 1.00 p.m. and he was with his daughter till 1.30 p.m. Learned counsel submits that this itself shows that prosecution is trying to hide genesis of the case by leading false evidence. The oral dying declaration given to P.W.3 Kaweribai i.e. mother of deceased Renuka is also relied upon by the trial court, however, if the version of father of victim is considered, he has nowhere referred to the presence of P.W.3 Kaweribai alongwith him at any point of time to the hospital. So far as the motive is concerned, two totally different stories are put-forth by the prosecution under two different statements of deceased Renuka.

5. The learned counsel further submits that as per the evidence of P.W.1 Dr. Bhosale, who had conducted postmortem, right upper limb of the deceased had suffered 8% burns and the burn was spread on palm. P.W.11-Dr. Kadam has also admitted that both upper limbs had suffered 18% burns and as per this witness, there could not be clear ridges of thumb marks. P.W.8 Kundlik (on inquest panchanama) has categorically admitted in cross examination that palms of patient Renuka were also covered by bandage. However, both the dying declarations Exhibits 32 and 35 are having clear thumb impressions. This goes to show that the thumb impressions appearing on the dying declarations are not of deceased Renuka.

6. The learned counsel submits that, if the medical papers of the hospital at Aundha (N) are seen, history of accidental burns is recorded therein. Even in the medical case papers of Aadhar Hospital at Nanded, history of accidental burns was recorded, but by scoring the same, the word homicidal was recorded. The said documents were not brought on record by the prosecution deliberately.

7. As regards, oral dying declarations, the learned counsel submits that there are three oral dying declarations made by the deceased to her father P.W.2, mother P.W.3 and brother P.W.4 respectively. In spite of the same, none of them had lodged report to the police. Their statements were also recorded after four days of incident when crime was already registered on the basis of dying declaration Exhibit 32.

8. Learned counsel submits that on perusal of medical case papers of deceased Renuka, it appears that there is absolutely no reference of recording of any dying declaration during the course of treatment and this creates doubt about genuineness of the statement made by deceased Renuka. Learned counsel submits that it is the appellant, who shifted deceased Renuka to the hospital and if there would have been an intention of the appellant to commit her murder, he would not have shifted her to the hospital. This itself shows that there was no intention on the part of appellant to commit the offence as alleged by the prosecution. The learned counsel submits that considering the entire evidence on record, no case under Section 498-A of IPC is made out against the appellant/accused no.1 and benefit of

doubt should have been given to him. Learned counsel thus, submits that the prosecution has failed to prove the case beyond reasonable doubt and the appellant accused is, thus, entitled for benefit of doubt and deserves to be acquitted.

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

- i) *State of Punjab vs. Gian Kaur and another*, reported in *AIR 1998 SC 2809*,
- ii) *Vilas Vikramsingh Deshmukh and others vs. State of Maharashtra*, reported in *2014 (3) Bom. C.R. (Cri.) 341*,
- iii) *Gajanan Hanmantu Jiddewar vs. State of Maharashtra*, reported in *2016 (2) Bom.C.R. (Cri.) 496*,
- iv) *Ashok Dadarao Sable vs. State of Maharashtra*, reported in *2017 ALL M.R. (Cri.) 282*,
- v) *Suresh Arjun Dodorkar (Sonar) vs. State of Maharashtra*, reported in *2005 All M.R. (Cri.) 1599*;
- vi) *Rani @ Anjali Vaijinath Shinde vs. State of Maharashtra*, reported in *2017 (2) Bom.C.R. (Cri) 849*;
- vii) *Kalu Ram vs. State of Rajasthan*, reported in *AIR 2000 SC 3630*.

10. Learned Additional Public Prosecutor submits that the prosecution evidence is consistent, truthful, trustworthy and reliable. The onus to explain the circumstance under which deceased Renuka met with homicidal death is on the appellant-accused and in absence of satisfactory explanation as to the cause of death of deceased Renuka, legitimate inference can be drawn that the appellant-accused has poured kerosene on the person of Renuka and set her on fire. Learned A.P.P. submits that minor omissions and elaborations in evidence of prosecution witnesses do not adversely affect the prosecution case if the witnesses had supported the prosecution case on vital aspects of the case.

11. Learned A.P.P. In order to substantiate her submissions placed reliance on the following judgments:-

- i) *Laxman vs. State of Maharashtra*, reported in *AIR 2002 SC 2973*,
- ii) *P.V. Radhakrishna vs. State of Karnataka*, reported in *AIR 2003 SC 2859*.

12. The prosecution case rests upon two dying declarations in writing and three oral dying declarations. Dying declaration Exhibit 32 came to be recorded on 04.06.2012 during 01.00 to 01.30 p.m. at Civil Hospital, Nanded by P.W.5 Naib Tahsildar Sunil Goivindrao Machewad. Another dying declaration was recorded on 05.06.2012 at about 11.00 to 11.30 a.m. by P.W.6 Govind Bhokkarkar, Head Constable, Shivaji Ngar Police Station, Nanded at one private hospital named and styled as Aadhar Hospital, Nanded. P.W.7 Dr. Girish Umare, RMO, Civil Hospital, Nanded has made the endorsement about conscious state of mind of deceased Renuka on dying declaration Exhibit 32. P.W.11 is Dr. Sanjay Kadam, who has made endorsement about conscious state of mind of deceased Renuka on dying declaration Exhibit 35. P.W.1 Dr. Santosh Bhosale, Assistant Professor, Department of Forensic Medicine and Toxicology, Nanded has examined the dead body of Renuka and prepared postmortem notes marked at Exhibit 22.

13. The Supreme Court has laid down, in several judgments, 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 base 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** (supra) relied upon by the learned APP, 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.....”

14. In the light of the above principles, acceptability of the dying declarations in the instant case as referred above is required to be considered. So far as dying declaration Exhibit 35 recorded on 05.06.2012 by P.W.6 Head Constable Bhokkarkar is concerned, the same was recorded at later time and in para 24 of the judgment, the learned Judge of the trial court has observed that the evidence of P.W.6 head Constable Bhokkarkar is not worthy to rely upon. The learned Judge of the trial court has further observed that P.W.6 Head Constable Bhokkarkar did his job most negligently. The learned counsel for the appellant/accused has vehemently submitted that when there are more than one dying declarations, then it would not be appropriate on the part of the trial court to accept one and discard others while convicting the appellant/accused. In the instant case, while recording the dying declaration Exhibit 35, P.W.6 Head Constable Bhokkarkar, though has not taken sufficient care to obtain endorsement of the concerned medical officer prior to recording of the dying declaration, on careful

perusal of the contents of the dying declaration Exhibit 35 we do not find any inconsistency on the material aspect if it is considered alongwith the dying declaration Exhibit 32 which was recorded first in time on 04.06.2012 by the Naib Tahsildar. In both dying declarations Exhibits 32 and 35, irrespective of some other unwanted details, deceased Renuka had consistently stated that the appellant/accused no.1 poured kerosene on her person from a small kerosene lamp and set her on fire.

15. P.W.5 Naib Tahsildar Sunil Machewad has recorded dying declaration Exhibit 32. He had taken all the precautions before and after recording of dying declaration Exhibit 32. The learned counsel for the appellant/accused no.1 has assailed the oral evidence of P.W.5 on the ground that there is interpolation apparent on Exhibit 32 in respect of the endorsement made by the concerned medical officer about consciousness of the patient as the same was inserted between two paragraphs and similarly, the second endorsement at the top of the dying declaration Exhibit 32 was also made in margin and inserted in between two paragraphs. The learned counsel for the appellant/accused no.1 has also vehemently submitted that dying declaration Exhibit 32

needs to be discarded since P.W.2 (father of the deceased) has admitted in his cross-examination that he was near his daughter between 01.00 to 01.30 p.m. The learned counsel submits that, thus, the dying declaration Exhibit 32 was recorded in presence of the father of the deceased. He has also assailed the evidence of P.W.5 Naib Tahsildar on the ground that he himself has admitted in his cross-examination that even the medical officer was also not present when he recorded the dying declaration Exhibit 32.

16. We do not find any substance in the above submissions made by learned counsel on behalf of the appellant/accused no.1. On careful scrutiny of the evidence of P.W.2 Sarjerao (father of the deceased) it appears that he is an illiterate person not able to understand watch time correctly. Merely on the basis of the admission given by him in cross-examination that he remained with his daughter between 01.00 to 01.30 p.m., no such inference could be drawn when P.W.5 Naib Tahsildar Sunil Machewad has specifically deposed that he had recorded the statement of deceased Renuka and at that time no other person was present. On careful scrutiny of the evidence of P.W.5 Naib

Tahsildar Sunil Machewad and P.W.7 Dr. Girish Umare, we do not find any substance in the submissions of the learned counsel for the appellant/accused that interpolation in the dying declaration has been done to suit the prosecution story that before, during and after recording of the dying declaration, patient Renuka was conscious and was able to give her statement. It is true that there are some contradictions as to when P.W.5 Naib Tahsildar Sunil Machewad has made his endorsement on the top of the dying declaration Exhibit 32 and as to the endorsement made by P.W.7 Girish Umare on the top of dying declaration Exhibit 32, whether prior to endorsement made by P.W.5 Naib Tahsildar Machewad or after his endorsement. However, at the same time, we cannot ignore the evidence of P.W.7 Dr. Girish Umare who is RMO of Civil Hospital, Nanded, deposed that he has made the endorsement on the dying declaration Exhibit 32 after examination of patient Renuka. He has also recorded blood pressure and pulse of the patient and asked questions to the patient to which she replied properly and then he put the endorsement on the top of the dying declaration Exhibit 32. Furthermore, on careful scrutiny of the evidence of P.W.5 Naib Tahsildar Sunil Machewad and

considering the entire text of his evidence, it appears that P.W.7 Dr. Girish Umare was present near deceased Renuka while recording her dying declaration Exhibit 32. We are not inclined to discard Exhibit 32 on some stray admission given by P.W.5 Naib Tahsildar Sunil Machewad to the effect that at the time of recording of dying declaration Exhibit 32 he himself and patient were only present and he asked the Police, Doctor and relatives of the patient to go out of the ward. Even he has denied the suggestion in the later part of the cross-examination that he obtained second endorsement of the Doctor in his cabin.

17. P.W.5 Naib Tahsildar Sunil Machewad went to the civil hospital, Nanded immediately after the requisition received. Thereafter, he had approached P.W.7 Dr. Girish Umare and obtained his endorsement about conscious state of mind of deceased Renuka before recording her dying declaration Exhibit 32. He had thereafter given his identification to the patient and explained to her that he had come there to record her dying declaration. He has recorded the statement in question and answer form. On questioning deceased Renuka as to how the incident occurred, she told him that yesterday evening, her

husband asked her to prepare food and the her mother-in-law did not allow her to consume that food. Again she was asked to prepare food. Then she slept. In the morning at 4.00 a.m., she woke up. Her husband asked her to heat water. Thereafter, her husband poured kerosene on her person from a small lamp and set her on fire by igniting match stick. Thereafter, her husband did not help her when she raised shouts. The neighbors came there and extinguished the fire. In the instant case, we do not find any material to show that the dying declaration was the product of imagination, tutoring or prompting. On the other hand, the same appears to have been made by the deceased voluntarily. The dying declaration Exhibit 32 is trustworthy and has a credibility. Deceased Renuka was in a fit state of mind as duly endorsed by the concerned independent medical officer P.W.7 Girish Umare who has no animus against the appellant/accused.

18. The learned counsel for the appellant/accused has also assailed the dying declaration Exhibit 32 on the ground that the palms of the deceased were 100% burnt and as such obtaining her thumb marks was impossible. The witness at inquest

panchanama P.W.8 Kundlik Lekule has categorically admitted in his cross examination that palms of the deceased were also covered by bandage. The learned counsel for the appellant has placed reliance on cases of *State of Punjab vs Gian Kaur and another* (supra) and *Gajanan Hanmantu Jiddewar vs State of Maharashtra* (supra) to substantiate his contentions. In the first case of *State of Punjab vs Gian Kaur and another* in the facts of the said case, the Supreme Court in para 5 of the Judgment has made the following observations:

“5. The High Court disbelieved the dying declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration had clear ridges and curves. The High Court found evidence of Dr. Ajay Sahni – P.W.1 not reliable as he failed to satisfactorily explain how such a thumb mark could appear on the dying declaration when Rita had 100% burns over her body. The High court relied upon the deposition of Doctor Aneja, who had performed the post-mortem and who has categorically stated that there were 100% burns over her body and both the thumbs of Rita were burnt. In view of such inconsistent evidence, the High Court was right in giving benefit of doubt to the respondents. It cannot be said in this case that the High Court has taken an unreasonable view.”

Secondly, in the case of ***Gajanan Hanmantu Jiddewar vs State of Maharashtra***, the Division Bench of this Court (Coram: B. R. Gavai and A. S. Chandurkar, JJ.), in para 10 and 11, has made the following observations:

“10. That leaves us with the third dying declaration which is at Exh.32. This dying declaration is dated 27/04/2011. The prosecution has examined one Shriram Urkunde as PW-2 below Exh.31. This witness was working as Naib Tahasildar at Wardha. On receiving necessary instructions, he went to Kasturba Medical Hospital and after contacting the Medical Officer who examined her to be fit, he recorded the dying declaration. According to him, the deponent was examined prior to recording her statement as well as after the same was completed. He has further stated that as the deponent was unable to give her signature, he took her thumb mark. The endorsements by the Medical Officer as regards the mental and physical state of fitness of the deponent are at Exh.51 and Exh.52. In his cross examination, this witness has stated that there were bandages on the person of the victim and in addition to the same, intra injections were also being administered to her. It has been stated that both the palms of the victims were found burnt.

11. It is to be noted that the aforesaid evidence indicates that Laxmi was bandaged and that both her palms had

been found burnt. In such situation, it has not been explained as to how she was in a position to give her thumb impression. Further perusal of Exh.32 indicates that the thumb impression bears clear ridges and curves. In State of Punjab (supra), the victim therein had suffered 100% burns and her dying declaration indicated presence of clear ridges and curves of the thumb impression. It was held by the Hon'ble Supreme Court that the Medical Officer who was examined therein could not satisfactorily explain as to how the thumb impression on the dying declaration could have such clear ridges and curves especially when the victim had 100% burns over her body. In the present case, Laxmi had about 69% burns. There is no explanation by the Medical Officer as regards the presence of such ridges and curves on the thumb impression. Moreover, the evidence indicates that the palms were found burnt and the body was also bandaged. The learned Counsel for the appellant has rightly placed reliance upon the judgment of the Hon'ble Supreme Court in Surinder Kumar (supra) wherein also there was absence of explanation as to the manner in which the thumb impression of the deceased was obtained when her entire body was burnt. On this count, therefore, the dying declaration at Exh.32 also cannot be relied upon to support the conviction of the appellant."

19. In the instant case, P.W.5 Naib Tahsildar Sunil Machewad and P.W.7 Doctor Girish Umare have not admitted that both the palms of deceased Renuka were bandaged. On the other hand, in

para 7 of the cross-examination, P.W.5 Naib Tahsildar Sunil Machewad has stated that there were no burn injuries to the hands of deceased Renuka. P.W.7 Girish Umare, in para 6 of his evidence, has recorded the percentage of burn sustained by deceased Renuka and deposed that she had sustained 78% of burns and the percentage of burns to right hand is 8% whereas, to the left hand is 7%. As per the method of calculation, he has given one percentage to the palm. It appears that the defence has cleverly avoided to put specific question to P.W.7 Dr. Girish Umare about bandages to the palms and also the burn injuries, if any, appearing on the palms of deceased Renuka. So far as the so-called admission given by P.W.8 Kundlik Lekule, who happened to be the panch on the inquest panchanama Exhibit 41, after death of Renuka on 11.06.2012, inquest panchanama Exhibit 41 was drawn. P.W.8 Kundlik has given admission in the cross-examination that bandages were applied to the hands and legs. He was not specifically put the question whether the bandages were covering the palms of deceased Renuka also. In the backdrop of this, we give importance to the evidence of P.W.1 Dr. Santosh Bhosale who had conducted postmortem of dead body of Renuka. In para 2 of his examination-in-chief he

has deposed in detail about the percentage of burns sustained by deceased Renuka. In para 6 of his cross-examination, though he has stated that the injuries sustained by Renuka were possible by accident, suicide or homicide, he voluntarily stated that in this case there was least possibility of accident and further unequivocally stated that palms of Renuka were not burnt. He has specifically denied the suggestion given by the defence that both the palms and thumbs of deceased Renuka were burnt. In view of the same, the aforesaid cases relied upon by the learned counsel for the appellant/accused cannot be made applicable to the facts and circumstances of the present case. We find no substance in the submissions made by the learned counsel for the appellant/accused in this regard.

20. So far as the oral dying declarations before P.W.2 to P.W.4 are concerned, the learned counsel for the appellant/accused has assailed their evidence mainly on the ground that in spite of the oral dying declarations, none of them had gone to police station for lodging report. Furthermore, their statement came to be recorded four days after the incident. We find no substance in the submissions made by the learned counsel on behalf of the

appellant/accused for the reason that crime in the instant case was registered against the accused persons on the basis of the dying declaration. Furthermore, it is unreasonable to expect from the parents and the real brother of the deceased to insist the police to record their statements when the crime was already registered against the accused persons on the basis of dying declaration of deceased Renuka. On careful perusal of the evidence of P.W.2 to P.W.4, it appears that there evidence is consistent on material aspect to the effect that deceased Renuka had stated before them that in the morning when she was asked to heat water by the appellant/accused no.1, he had thrown kerosene on her person from a small lamp and thereafter set her ablaze with the help of match stick.

21. The learned counsel for the appellant/accused has placed his reliance in the case of ***Vilas Vikramsingh Deshmukh and others vs. State of Maharashtra*** (supra) wherein the Division Bench of this Court, in para 9 of the judgment, has made the following observations:

“9. The prosecution has also relied on oral dying declarations made by Archana to PW 4 Asha and PW 7 Vandana wherein according to the prosecution, both the witnesses have stated that accused Nos. 3 and 4 i.e Jaimala and Rajani poured kerosene on Archana and set her on fire. It is pertinent to note that though these witnesses claimed that Archana told them that she was set on fire, however, they have not made any attempt to go to the police and lodge F.I.R. The incident took place on 29.03.2005 at 11.45 a.m. Archana died on 30.03.2005 at 08.30 a.m, however, F.I.R. has been registered on 30.03.2005 at 06.45 p.m. This delay in lodging the F.I.R. also raises doubt about the prosecution case. Obviously, the statements of the witnesses who have deposed about the oral dying declarations, were recorded after registration of F.I.R. In such case, there is delay in recording the statements of the witnesses and looking to the facts and circumstances of this case, we are not inclined to place any reliance on the evidence of these witnesses who have implicated accused Nos. 3 and 4 i.e Jaimala and Rajani.”

22. It appears that no ratio is laid down as such, and as observed in para 9, in the facts and circumstances of the said case, the Division Bench of this Court was not inclined to place any reliance on the evidence of the witnesses whose statements came to be recorded in spite of oral dying declaration made before them after registration of the F.I.R. In the instant case,

crime was registered on the basis of dying declaration Exhibit 32 recorded on the date of the incident itself. It is not the case that crime came to be registered on the basis of the complaint lodged by the parents or the brother of deceased. It has also come in the evidence of P.W. 2 to P.W.4 that they were not allowed to meet deceased Renuka. Subsequently, when they were allowed to meet separately with deceased Renuka, she had disclosed them the incident.

23. In view of the above, we do not find any infirmities in the conclusion drawn by the learned Additional Sessions Judge by placing reliance on the evidence of P.W.2 to P.W.4 with regard to the oral dying declarations made by deceased Renuka before them. These three oral dying declarations are consistent on material point.

24. We do not find any substance in the submissions that there was no electricity in the house of the appellant/accused and as such, there was no possibility of subjecting deceased Renuka to any physical or mental harassment on the count of non-fulfillment of demands like cooler etc.

25. In the instant case, the defence has examined one witness D.W.1 Vithal Digambar Moghe, who happens to be the neighbour of appellant/accused. He woke up at 4.30 a.m. on hearing shouts of deceased Renuka. He and one another neighbour. Sanju Shinde put blanket and shawl on the person of deceased Renuka and extinguished the fire. According to them, deceased Renuka was saying that small kerosene lamp fell on her person. We find support to the prosecution story from the evidence of defence witness that, firstly, the incident had taken place in the early morning in between 4.00 a.m. to 4.30 a.m. as stated by deceased Renuka in her dying declaration Exhibit 32 and further, there is reference to the small kerosene lamp. Furthermore, D.W.1 Vithal Moghe has admitted in his cross-examination that all the accused were present there at the time of the incident. It is pertinent that though the neighbours had tried to extinguish fire, none of the accused, including the appellant/accused no.1 had tried to extinguish the fire. The appellant/accused has not sustained any burn injuries on his hands/palms. These two neighbours D.W.1 Vithal Moghe and Sanju Shinde, who are residing at a distance, ran towards the

house of the accused. However, in cross-examination, D.W.1 Vithal Moghe has admitted that he has extinguished fire and before that, it was not extinguished.

26. Thus, considering the overall facts and circumstances of the case, and particularly the dying declaration Exhibit 32, which inspires confidence in our mind about its reliability and voluntary nature, we find no fault in the judgment and order of conviction passed by the learned Judge of the trial court against the appellant/accused no.1. Accordingly, the criminal appeal is hereby dismissed.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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