

JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.314 OF 2015

Heerabai Ranganath Mali,
age about 58 years,
R/o. Pimpalad, Tal. Chandwad,
District Nashik.

...APPELLANT

VERSUS

The State of Maharashtra
[Through Chandwad Police Station]

...RESPONDENT

...

Ms. Rohini Dandekar, Advocate for Appellant.
Ms. Sharmila S.Kaushik, APP for Respondent-State

...

**CORAM: S.S. SHINDE AND
MRS.MRIDULA BHATKAR, JJ.**

DATE OF RESERVING JUDGMENT : 19TH SEPTEMBER, 2018.

DATE OF PRONOUNCING JUDGMENT: 25TH SEPTEMBER,2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the Judgment and order dated 6th February, 2015, passed by the Additional Sessions Judge, Niphad in

Sessions Case No.39 of 2012, thereby convicting the Appellant/accused – Heerabai Ranganath Mali for the offence punishable under Section 302 of the Indian Penal Code [for short 'I.P. Code'] and sentencing her to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- in default of payment of fine to suffer further rigorous imprisonment for a period of 3 months. The trial Court also convicted the Appellant/accused – Heerabai Ranganath Mali for the offence punishable under Section 498-A of the I.P. Code and sentenced her to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.2000/-, in default of payment of fine to suffer further rigorous imprisonment for a period of 2 months. All the substantive sentences were directed to be run concurrently. Hence this Appeal is filed by the Appellant challenging the conviction and sentence.

2. In the Sessions Case, there were in all five accused, namely, accused No.1 Heerabai Rangnath Mali [mother in law of Mangala. Hereinafter Mangala will be referred as victim or deceased], accused No.2 Kailas Rangnath Mali [husband of the deceased], accused No.3 Sangita kedu Mali and accused No.4 Manisha Navnath Mali [sister in laws of the deceased] and accused No.5 Navnath Rangnath Mali [brother in law of deceased]. The trial Court convicted accused No.2 - Kailas Rangnath Mali for the offence punishable under Section 498-A of the IPC and sentenced him to suffer rigorous imprisonment for a period of three years and to pay a fine. The trial Court also convicted accused No.2 for the offence punishable under Section 504 of the IPC and sentenced him to suffer rigorous imprisonment for a period of two years and to pay a fine. All the substantive sentences were directed to be run concurrently. It appears that accused no.2 was in

custody during the course of trial and as he has already undergone the sentence, he was directed to be set at liberty by the trial Court. The trial Court acquitted accused Nos.3 to 5 from all the offences with which they were charged. Hence this Appeal is filed by accused no.1 namely Heerabai challenging her conviction and sentence.

3. The prosecution case, in brief, is as under:

A] Accused no.2 Kailas is husband of deceased and accused no.1 is mother-in-law, accused no.5 is brother-in-law and accused Nos.3 and 4 are sister-in-laws [java] of deceased. Prior to one year of the incident, marriage of deceased was solemnized with accused No.2 at Pimpalad and deceased was 7 months pregnant. Kailas and his brothers were residing separately. Accused No.1 and father-in-law of the deceased were residing with them.

B] It is further the case of the prosecution that on 02.02.2012 at about 7.00 p.m. deceased Mangala was cooking the food, at that time accused no.1 came there with plastic Can containing kerosene and poured kerosene into one rounded steel pot and poured it on her person. Due to that deceased caught fire by flaming of hearth. At that time, accused Nos. 2 to 4 were present there and were saying that she herself set her on fire as she was not willing to cohabit. They have not extinguished the fire but detained her in the room. Thereafter, son of her elder-father in law [Sarpanch] and one person came there and extinguished the fire. Then her cousin brother in law [Sarpanch] took her to Sub-District Hospital at Chandwad where primary treatment was given to her. However, she had sustained 90% to 100% burn injuries, therefore, Dr.Mandlik referred her to Civil Hospital, Nashik for further treatment.

Then she was admitted to Civil Hospital, Nashik. Thereafter, API Pawar directed Head Constable Wagh to record the statement of victim at Civil Hospital, Nashik. In pursuance of the said order, Head Constable Wagh had gone to Civil Hospital and requested Doctor to examine the victim and give his opinion as to whether victim is in a condition to give the statement or not, and thereafter he recorded statement of the victim in the presence of the Doctor and obtained thumb impression of the victim on the said statement. Then he handed over the same to PSO Malhari Wagh. On the basis of the statement of victim, PSO Malhari Wagh registered crime No.8/2012 for the offence punishable under Sections 302, 504 read with Section 34 of the IPC against the accused persons.

C] Thereafter, on 3rd February, 2012 police of Vadner Police Station issued a letter to Special Executive Magistrate, Shri Pawar and

requested him to record dying declaration of deceased. In pursuance of the said letter at about 1.00 p.m., the Special Executive Magistrate had gone to Civil Hospital and requested Dr. Lad to examine the victim and give her opinion as to whether 'Mangala is in a condition to give the statement or not.' Accordingly, Dr. Lad examined Mangala and opined that 'Mangala is in a condition to give the statement' and made endorsement accordingly on the paper. Thereafter, the Special Executive Magistrate asked the relatives of the victim and other persons present there to leave burn ward. Then he disclosed his identity to victim and told her that he came there to record her dying declaration. Then he recorded statement of victim as per her say and obtained her left thumb impression on the said statement. Then again he called Dr. Lad and asked her to examine the victim and give her opinion as to whether victim was in a condition to give her statement or not.

Accordingly, Dr.Lad examined her and opined that patient was in a fit condition to give statement and accordingly made endorsement on the said paper. He handed over the copy of the said statement to police constable Wagh on the same day and obtained his acknowledgement at Exhibit-53.

D] Then P.I. Pawar visited and inspected the spot of incident and seized pieces of red colour bangles, white metal two tordya, pieces of half burnt colour saree and parrot colour petticoat along-with one steel pot [tambya] having smell of kerosene plastic Can having $\frac{1}{2}$ liter kerosene and one half burnt match stick box and seized the same under spot-cum-seizure panchnama. He also got prepared map of the spot of incident. He recorded statement of witnesses then arrested accused Nos.1 to 4 on the spot and prepared their arrest panchanamas. He collected copy of dying declaration of victim recorded by Special

Executive Magistrate. On perusal of the same, he arrested accused No.5. Then he handed over seized muddemal to muddemal Clerk and prepared its muddemal receipt. He sent seized muddemal to Forensic Laboratory for its Chemical Analysis and collected C.A. report of the same. He collected inquest panchnama, postmortem report and other documents and added Section 302 of the IPC in the said crime. After completion of the investigation, he filed charge sheet against the accused persons in the Court.

E] As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Chandwad committed the case to the Court of Sessions Court on 20.06.2012. On committal of the case, the same is registered as Sessions Case No.39/2012. On 02.04.2013, the trial Court has framed the charge under Sections 302, 307, 498-A

and 504 read with Section 34 of the IPC against the accused persons vide Exh.22. Its contents were read over and explained to them in vernacular to which they pleaded not guilty and claimed to be tried.

4. Heard learned counsel appearing for the Appellant and learned APP appearing for the respondent – State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. Learned counsel appearing for the appellant submits that there are discrepancies in the two written dying declarations recorded by the Head Constable and the Special Executive Magistrate. The same are not consistent with each

other. The dying declarations are not corroborated by the oral evidence. The Medical Officer, who has examined the victim before recording the dying declaration, has not specifically stated that the patient was well oriented. Thus it is clear that while giving the dying declaration the patient was not oriented, to give the statement. Learned counsel further submits that the dying declaration recorded by the Police Constable is not admissible in the evidence as while recording the said dying declaration, father of the deceased was present and therefore the possibility of tutoring cannot be ruled out. Thus the dying declarations are not reliable and trustworthy and therefore conviction cannot be based upon such dying declarations. She further submits that the prosecution has failed to prove that the death of Mangala was homicidal.

6. Learned counsel further submits that the prosecution has neither brought on record the

motive for the alleged offence nor there is any explanation by the deceased why all the accused persons burnt Mangala. Learned counsel further submits that on the same set of evidence the trial Court acquitted original accused nos. 3 to 5 from all the offences with which they were charged, however, the appellant has been convicted and sentenced and therefore the findings recorded by the trial Court are perverse.

7. On the other hand, learned APP appearing for the Respondent – State invites our attention to the dying declarations recorded by the Police Constable and Special Executive Magistrate and submits that both the dying declarations are trustworthy and reliable. She further invites our attention to the evidence of PW-4 Prakash Pawar, special Executive Magistrate, who recorded the dying declaration Exh.54. and PW-6 Gayabai to whom oral dying declaration given by deceased

Mangala. She further submits that after considering the entire evidence on record the trial court has convicted the accused and the findings recorded by the trial Court are in consonance with the evidence brought on record. She, therefore, submits that the appeal may be dismissed.

8. It is significant to note that the prosecution case mainly rests upon two written dying declarations, (and one oral dying declaration given to PW-6) Exhibit-85 recorded by Police Head Constable PW-9 Ananda Wagh and Exhibit-54 recorded by the Special Executive Magistrate i.e. PW-4 Prakash Nandu Pawar. Firstly we will examine the dying declaration recorded by PW-9 Ananda Wagh, Police Head Constable.

9. PW-9 Ananda Wagh, Police Head Constable deposed that on 3rd February, 2012, API Pawar

directed him to record statement of victim at Civil Hospital, Nashik and he went to Civil Hospital to record the statement of the victim, where he met to Doctor and thereafter recorded the statement of the victim. He further deposed that Doctor told him that victim was able to give the statement. He recorded statement of victim in presence of the Doctor, as per her say. Said statement was recorded by him in his handwriting. On the said statement, he had taken signature of the Doctor, as he was present there and obtained thumb impression of victim on the said statement. Thereafter, he put his signature on the said statement. He proved the dying declaration Exhibit-85.

10. We have perused the entire cross examination of this witness. This witness during the cross examination has specifically admitted that while recording the dying declaration, father

of the victim, namely, Rajaram, was present in the Hospital. PW-9 further admitted that he has recorded statement of victim in presence of Rajaram, father of the victim and also he has taken thumb impression of Rajaram on the said statement as a witness. We find considerable force in the argument advanced by learned counsel appearing for the appellant that evidence of PW-9 cannot be relied upon, and explicit reliance cannot be placed upon the dying declaration Exh.85 recorded by this witness as while recording the said dying declaration, father of the victim was very well present and therefore the possibility of tutoring the victim cannot be ruled out. However, even though the evidence of this witness is discarded, then also there is sufficient evidence on record in the form of another dying declaration recorded by the Special Executive Magistrate and oral dying declaration given by the victim to PW-6 Gayabai Shivram Pawar.

11. Now we will consider evidence of PW-4 Prakash Nandu Pawar, Special Executive Magistrate, who recorded the dying declaration of the victim, Exh.54. During the course of his examination in chief, he deposed that he was appointed as Special Executive Magistrate. He further deposed that on 03.02.2012, Vadner Bhairav police had come to him at his office. Police told him that one lady by name Mangala Kailas Mali was admitted in Civil hospital, Nashik, in burn ward and police requested him to record her dying declaration. Police had given him a letter in writing [Exh.53] to that effect. He further deposed that on the very day, at about 1.00 p.m. he had gone to Civil Hospital, Nashik. One Dr. Smt. Anita Lad was on duty at that time. He requested Dr.Anita Lad to examine the patient and to opine whether she was in a condition to give statement or not. Accordingly, Dr. Anita Lad examined the patient by name Mangala Mali and opined that she was in a

condition to give statement. Dr.Lad gave endorsement to that effect on the upper portion of the form of dying declaration. Said portion bears the signature of Dr. Anita Lad.

12. PW-4, Prakash Pawar further deposed that thereafter he had gone towards the patient Mangala, who was admitted in burn ward. He asked the relatives of the victim, other persons, who were present there, and Dr.Lad to leave burn ward. Accordingly, all of them left burn ward. Then after, he disclosed his identity to the patient Mangala Mali and told her that he came to record her dying declaration. He further deposed that before that, he had asked the name of the victim and she told her name. Victim also told her age as 20 years. She also told that she was doing household work. When he asked the address of the victim, she told her address at Pimplad, Tq. Chandwad. He also asked the victim about the

members in her family. The victim told that she used to reside with her husband, father-in-law and mother-in-law.

13. PW-4, Prakash Pawar further deposed that he asked the victim, how she burnt. She told that at when she was cooking the food, at that time, her mother-in-law came there along with kerosene Can and kerosene lamp. The victim further told that then after, her husband, the elder brother of her husband along with his wife also came there. The victim further told that, her mother-in-law poured kerosene on her person. The victim further told that, the hearth was burning and hence, there was flaming of the hearth and hence, she burnt. The victim further told that, her mother-in-law and elder brother of her husband were saying that, she herself set her on fire, since she was not willing to cohabit. The victim further told that, nobody came to extinguish the fire and on the

contrary, they detained her in room. The victim further told that the son of her elder father-in-law and one person of Maratha community came there and they extinguished the fire. She further told that they both took her into Government Hospital at Chandwad. The victim further told that, then after, she was brought at Civil hospital, Nashik. He further deposed that he asked the victim when the incident took place and she replied that, the incident took place at 7.00 p.m. on the earlier day. When he asked the victim who were present in the house on the day of incident, at that time, she replied that, her husband, her father-in-law, mother-in-law, elder brother of her husband and his wife were present. He further deposed that, he asked the victim whether she had any complaint, and the victim replied that her husband used to say that she should not reside at his house. The victim further replied that, her husband further told her to terminate her pregnancy.

14. PW-4 deposed that he asked the victim, whether she wanted to say anything, and she replied that, she was brought by using sugar quoted language and was set on fire. He further deposed that he read over the said statement given by the victim to her. He asked the victim whether she understood it, and she answered in affirmative. Thereafter, he obtained left hand thumb mark of the victim on her statement. PW-4 further deposed that, he also put his signature below the statement of victim. He deposed that the said statement of the victim is in his handwriting and its contents are correct as stated by the victim. PW-4 proved the said dying declaration Exhibit 54.

15. PW-4 further deposed that thereafter, he again called Dr.Smt.Anita Lad. He again asked Dr.Anita Lad to examine the victim Mangala and to opine whether she was in a condition to give her

statement or not. Accordingly, Dr. Smt. Lad examined the victim and opined that, the patient was in a condition to give statement. Accordingly, Dr. Smt. Lad made endorsement to that effect at the end of statement. Then Smt. Lad signed below the endorsement. She also wrote date and timing.

16. During the course of the cross examination, a suggestion was put to PW-4 Prakash Pawar and he denied that in the answer of question no.4 the word as mother-in-law was inserted latter on. He admits that near the word 'mother-in-law', there is no signature or thumb mark of the victim. He further admits that in the answers to question nos. 7 and 9, there is no signature or thumb mark of the victim near the spot where there is scoring. He admits that as per the letter of police, the victim Mangala Mali had sustained 100% burn injuries. He was unable to state whether the victim was serious or not. He was unable to state

how many relatives were near the victim when he had gone to burn ward. PW-4 Prakash Pawar further denied all the suggestions put to him by the defence. He was unable to state whether the cots in burn ward are at the distance of five feet to each other. He admits that in the entire statement, the names of the accused are nowhere taken. The fingers of the hands of the patient were partially burns. All the fingers of the hands of the patient were totally burnt. To the thumb mark of the victim below dying declaration, no dastur is applied.

17. We have carefully perused the entire oral evidence of the PW-4. His evidence is reliable and trustworthy. Though he was extensively cross examined, on core of the prosecution case his evidence is not at all shattered. PW-4 has deposed that before recording the actual dying declaration, he has asked some preliminary

questions to the victim and satisfied himself that, Mangala was in a fit condition to give dying declaration. He specifically deposed that he asked the name of the victim, her age, address, the members in her family and the victim has given correct answers to all the said questions. Thus, PW-4 after satisfying himself that Mangala was in a fit condition to give the statement, recorded her dying declaration. PW-4 further deposed that thereafter he asked Dr.Smt.Lad to examine the patient and to opine whether she was in a condition to give her statement or not. Accordingly, Dr.Lad examined the patient and opined in writing that she was in a condition to give statement. Thereafter, PW-4 asked Mangala how the incident took place, and she narrated the details of the incident. Thereafter, he read over the contents of the statement to Mangala which she admitted to be correct. His evidence further discloses that Mangala also put her left hand

thumb mark on the said statement. His evidence further discloses that after recording dying declaration Exh.54, he again requested Dr.Lad to opine whether Mangala was in a fit condition to give statement and the Medical Officer after examining Mangala opined in writing on the dying declaration itself that Mangala was in a fit condition. Thus it is clear that after completing all the formalities and after taking every precaution, the dying declaration Exh.54 has been recorded by the Special Executive Magistrate – PW4 Prakash Pawar.

18. We have carefully perused the dying declaration Exh.54, recorded by PW-4 Prakash Pawar. After giving her name and other details, about the main incident Mangala has stated that on the day of incident she was cooking the food in the kitchen. Mangala further stated that her mother in law i.e. appellant herein, poured

kerosene on her person. Mangala further told that the hearth was burning and hence there was flames of hearth due to which she received burn injuries.

19. Learned counsel appearing for the appellant has argued that the dying declaration has to be read in its entirety. She further argued that in dying declaration Exh.54 the victim has made accusations against all the accused persons, however, the trial Court has acquitted accused nos.3 to 5 from all the offences but convicted the appellant for the offences punishable under Section 302 of the IPC and thus the findings recorded by the trial Court are perverse. In this context, it is pertinent to note that Mangala has attributed specific role against the appellant Heerabai. In dying declaration Exh.54, Mangala has categorically stated that her mother in law i.e. present appellant, has poured kerosene on her person. Therefore, we do not find

any force in the submissions made by the learned counsel appearing for the appellant to that effect.

20. The prosecution has conclusively proved the dying declaration Exhibit-54. The same is reliable and trustworthy. The said dying declaration is recorded by the Special Executive Magistrate in question and answer form. In view of the exposition by the Supreme Court in the case of Khushal Rao vs. State of Bombay¹, the dying declaration recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character. In the present matter,

¹ 1958 A.I.R. (S.C.) 22

the dying declaration Exhibit-54 is recorded by PW-4 Prakash Pawar, the Special Executive Magistrate, and therefore the same stands on a much higher footing.

21. Now we will examine the evidence of PW-7 — Dr. Anita Nilesh Lad, Medical Officer. She deposed that on 3rd February, 2012 she was attached to Civil Hospital, Nashik as Casualty Medical Officer from 9.00 a.m. to 3.00 p.m. On that day, she received letter from Special Executive Magistrate requesting her to examine victim Mangala and give opinion as to whether she is fit to give statement or not. Accordingly, she examined her at 1.05 p.m. and found that patient was in a fit condition to give statement. Accordingly, she made endorsement on the top of the paper produced by the Executive Magistrate and put her signature below said endorsement. She proved the endorsement Exh.54-A. She further

deposed that thereafter, Special Executive Magistrate recorded statement of Mangala and again requested her to examine the patient and give opinion as to whether patient was in a fit condition to give statement or not while recording the same. Accordingly, she again examined patient and gave her opinion below the said statement as 'patient is in fit condition to give statement' and put her signature below said opinion along with date and time. She proved the said endorsement at Exh.54-B.

22. During course of cross examination, PW-7 Dr.Anita Lad admitted that victim was 100% burnt. She has further stated that she has not given treatment to victim. Patient was referred from Chandwad Hospital to Civil Hospital. The condition of the victim was serious. She denied the suggestion that on the say of relatives of patient, she made incorrect endorsement at Exh.

54-A and 54-B. She further stated that able to speak terminology is used by common people for the medical terminology conscious oriented. Person able to speak may be or may not be conscious oriented. In her presence no talk took place between victim and Special Executive Magistrate. She checked blood pressure and pulse rates of victim as well as verified that Mangala was conscious and oriented. She further stated that due to administration of pain killer drugs, patient was stable. That treatment was not sedative. Said treatment was given by another Doctor. She does not know how much quantity of pain killer was administered to victim. Thereafter the counsel appearing for the accused before the trial Court referred one para in Narayan Reddy's Medical jurisprudence to witness and put certain questions. PW-7 further admitted that principal symptoms is severe pain which is responsible for initial shock, which merges

rapidly into the stage of hypo-tension and circulatory collapse associated with loss of fluid and protein. She further stated that some times due to loss of protein from the blood into interstitial tissue pulmonary and generalized oedema become severe and normally temperature rises. Vomiting is not necessary in every case. She further admits that if patient burnt 100% then his/her palms also burnt. She denied that she has given endorsement mechanically.

23. Upon careful perusal of the evidence of Medical Officer, PW-7 Dr.Anita Lad, it reveals that she has corroborated the version of PW-4 Prakash Pawar, Special Executive Magistrate. She has specifically stated that as per the request of PW-4 Prakash Pawar she has examined Mangala and found that she was in a fit condition to give statement. Accordingly, PW-7 has made written endorsement on the dying declaration. She has

specifically deposed that after completion of recording of the dying declaration, she has again examined Mangala and found that she was in a fit condition to give statement and accordingly she has made written endorsement on the said statement. Learned counsel appearing for the appellant has vehemently argued that while giving the endorsement the Doctor had not endorsed that the patient was oriented and therefore the evidence of PW-7 Dr.Anita Lad is liable to be discarded. We are not in agreement with the submission made by the learned counsel appearing for the appellant for the simple reason that though specific word "oriented" is not written by the Medical Officer in the endorsement, but she has categorically endorsed that patient was in a fit condition to give statement. Therefore, the evidence given by PW-7 Dr.Anita Lad is reliable, trustworthy and the same is corroborated by the evidence of PW-4 Prakash Pawar.

24. The Constitution Bench of the Supreme Court in the case of Laxman V/s State of Maharashtra² in para nos. 3 and 5 held thus :-

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is 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 man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit

2. 2002 Cri.L.J. 4095

state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each

particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjeet Kaur v. State of Punjab : 1999 (6) SCC 545* case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in *Paparambaka Rosamma and Ors. v. State of Andhra Pradesh 1999 (7) SCC 695* to the effect that "...in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept

the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Therefore, the judgment of this court in *Paparambaka Rosamma and Ors. v. State of Andhra Pradesh 1999 (7) SCC 695* must be held to be not correctly decided and we affirm the law laid down by this court in *Koli Chunilal Savji and Anr. v. State of Gujarat, 1999 (6) SCC 545 case.*"

25. The prosecution has examined PW-6 Gayabai Shivram Pawar, grand mother of the deceased. She deposed that deceased Mangala was her granddaughter. She further deposed that marriage of deceased Mangala was performed with accused No.2 at Kedrai, Tq. Chandwad before 4 years from the

date of incident. Thereafter, Mangala resided at her matrimonial house at Pimpalad. She further deposed that accused Nos.1 and 2 had driven out deceased Mangala and therefore, Mangala came to reside at maternal house. When PW-6 and her son Rajaram asked accused Nos.1 and 2 why they have driven out Mangala from their house, to which accused No.1 told that Mangala could not cook the food very well and accused No.2 Kailas told that he did not like Mangala and he wants to perform second marriage.

26. Regarding oral dying declaration PW-6 Gayabai deposed that on Thursday at about 6 p.m., her grand-son Karan received phone call from village Pimpalad that Mangala caught fire and got information about taking Mangala in Chandwad hospital. Then again, they got telephonic message that Mangala shifted to Civil hospital, Nashik. Therefore, PW-6 herself along with parents of

Mangala and daughter Nanda went to Civil Hospital, Nashik by a jeep and they met Mangala in Hospital. She further deposed that she asked Mangala how the incident was happened and Mangala told that when she was cooking the food, her husband, mother-in-law, both the brother-in-laws (bhaya) and their wives (java) came in the kitchen. Thereafter, accused No.1 Heerabai put kerosene in steel rounded pot (tambya) from the Can and poured kerosene on her person. Then all of them pushed her on the hearth. Hence, Mangala received burn injuries. PW-6 further deposed that on third day Mangala succumbed to the said burnt injuries.

27. During the course of cross examination, PW-6 stated that she does not recollect day, date and time when deceased Mangala came to maternal house. She further stated that her grand-daughter was 7 months pregnant. PW-6 Gayabai was further extensively cross examined by the defence,

however, nothing useful to the defence was brought on record and her statement in the examination in chief remained unshattered that Mangala gave oral dying declaration to her that appellant poured kerosene on her person. Thus, PW-6 has specifically deposed that Mangala has stated her that, though other accused persons were present but appellant has actively participated in the offence and poured kerosene on her person.

28. Upon careful perusal of oral testimony of PW-6 Gayabai, it is crystal clear that she has corroborated the version of PW-4 Prakash Pawar.

29. The prosecution has examined PW-3 Dr.Madhukar Yeshwant Shankhpal, who carried out postmortem on the dead body of Mangala. He deposed that he noticed 99% burn injuries on the body of patient and all those injuries were ante-mortem. He further deposed that at the time of postmortem,

he noticed that said Mangala was pregnant and pregnancy was full term pregnancy i.e. 9 months and female foetus was there in the womb. He further deposed that he opined that Mangala died because of shock due to burn injuries.

30. Thus, it is clear from the perusal of oral evidence of Medical Officer PW-3 Dr.Madhukar that at the time of incident, Mangala was pregnant for 9 months.

31. The prosecution has examined PW-1 Vijay Keshavrao Londhe, who is panch to the spot panchanama. PW-2 Dr.Hemant Sampatrao Mandlik is the Medical Officer, who gave primary treatment to Mangala when she was admitted in the Hospital. PW-5 Malhari Dhondiba Wagh is the Police Officer, who registered the crime. PW-8 Balasaheb Raghoji Pawar is the Investigating Officer, who deposed about the manner in which he has carried out the

investigation in the crime.

32. As already observed, dying declaration Exh.54 recorded by the Special Executive Magistrate is reliable, trustworthy and inspires confidence. The same is fully corroborated by the oral evidence of PW-6 Gayabai. On the material point of role attributed to the appellant, there is no variance in the written dying declaration and oral dying declaration given to PW-6 Gayabai. Deceased Mangala has specifically stated that her mother-in-law i.e. appellant, poured kerosene on her person and due to flames of hearth she received burn injuries. Soon after the incident in the Hospital itself, PW-6 Gayabai met Mangala at which time Mangala stated her that appellant poured kerosene on her person and due to which Mangala received burn injuries. Thus, conviction can be based upon such reliable, trustworthy and consistent dying declarations. The prosecution has

proved beyond reasonable doubt that appellant has poured kerosene on the person of Mangala due to which Mangala received burn injuries. Thus, the prosecution has proved that the appellant committed an offence punishable under Section 302 of the IPC.

33. So far as the offence punishable under Section 498-A of the IPC is concerned, PW-6 Gayabai, grand-mother of Mangala, has specifically deposed that appellant used to ill-treat Mangala on the point that she was unable to cook the food in proper manner. She further deposed that at one time appellant drove Mangala out of the house. Thus the prosecution has established beyond reasonable doubt that the appellant had committed an offence punishable under Section 498-A of the IPC.

34. The defence has examined DW-1, Dattu

Ramdas Mali, who deposed that when the relatives of Mangala enquired with her how the incident was happened, at that time Mangala replied that due to flare of lamp, her saree caught fire and therefore she was burnt. However, this witness has specifically deposed in the examination in chief itself that when incident occurred at that time except Heerabai i.e. appellant, other accused were not present on the spot. Thus, the evidence of this witness clearly shows that at the time of incident, appellant was present on the spot. Further, oral testimony of this witness cannot be relied upon as this witness is interested witness. In his examination in chief itself, he has specifically deposed that accused no.1 i.e. appellant herein, is his aunt. Therefore, the possibility cannot be ruled out that in order to save his aunt, close relative, this witness might have deposed falsely.

35. The Hon'ble Supreme Court in the case of Smt. Paniben V/s State of Gujarat³ has laid down the principles governing dying declaration in the following judgments, which could be summed up as under :-

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration (See Munnu Raja and another V. State of Madhya Pradesh (1976) 2 SCR 764);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of Uttar Pradesh V. Ram Sagar Yadav and others (AIR 1985 SC 416) and Ramavati Devi V/ State of Bihar, AIR 1983 SC 164);

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had on opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy and another V. Public Prosecutor (AIR 1976 SC 1994);

3 AIR 1992 SC 1817

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg V. State of Madhya Pradesh (1974 (4) SCC 264);

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kaka Singh V. State of M.P. (AIR 1982 SC 1021);

(vi) A dying declaration which suffering from infirmity cannot form the basis of conviction. (See Ram Manorath and others V. State of U.P. (1981(2) SCC 654);

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra V. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Oza and others V. State of Bihar (AIR 1979 SC 1505);

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying

declaration, the medical opinion cannot prevail.
(See Nanahau Ram and another V. State of Madhya Pradesh (AIR 1988 SCC 912)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. V/s Madam Mohan and others (AIR 1989 SC 1519)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Geshani V. State of Maharashtra (AIR 1982 SC 839)".

36. In the facts of the present case, dying declaration [Exh.54] of Mangala is trustworthy and proved by the prosecution through Special Executive Magistrate and it gets corroboration from the oral dying declaration made with PW-6 Gayabai, grand-mother of the deceased. There are no mitigating circumstances in favour of the appellant, since Defence Witness – Dattu Ramdas Mali in his deposition has stated about presence

of the appellant in the house at the relevant date and time. Even after commission of such ghastly crime, accused Meerabai did not show the signs of repentance, either by trying to extinguish the fire or taking victim – Mangala to hospital. Therefore, keeping in view all aforesaid principles governing dying declaration, this is a fit case to convict the appellant.

37. We have carefully perused the impugned judgment. The trial Court has considered entire evidence brought on record and rightly held that appellant is responsible for the death of deceased and thus she is held guilty of the offence punishable under Section 302 of the IPC for committing murder of the deceased Mangala. The trial Court further observed that accused nos.1 and 2 are held guilty for the offence punishable under Section 498A of the Indian Penal Code for subjecting deceased to cruelty.

38. Therefore, upon considering the evidence in its entirety, we are of the considered opinion that the findings recorded by the trial Court are in consonance with the evidence brought on record and therefore we do not think it necessary to cause interference in the findings recorded by the trial Court.

39. We do not find that there is any substance in the appeal. Accordingly, the Criminal Appeal stands dismissed.

[MRS.MRIDULA BHATKAR, J.]

[S.S. SHINDE, J.]

**Jyoti
Prakash
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