

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 195 OF 2014
WITH CRIMINAL APPLICATION NO. 6282 OF 2017

Manoj s/o. Balya Gavit
Age — 34 years, Occ. - Agri.
R/o. Dhulipada,
Tq. Nawapur, Dist. Nandurbar. ... APPELLANT

VERSUS

The State of Maharashtra ... RESPONDENT

Mr. A.D. Sonar and Mr. R. S. Shinde, Advocate for the
appellant
Mrs. V.N. Patil-Jadhav, APP for the respondent/State.

CORAM : T. V. NALAWADE &
S.M. GAVHANE, JJ.

DATED : 22-11-2019

ORAL JUDGMENT (PER :- S.M. GAVHANE, J.)

. The appellant (hereinafter referred to as 'the
accused') who has been convicted for the offence
punishable under Section 302 of the Indian Penal Code
(for short 'the IPC') and sentenced to suffer
imprisonment for life and to pay a fine of Rs. 2,500/-
(Rupees Two Thousand Five Hundred), in default, to

suffer rigorous imprisonment for one year by the Additional Sessions Judge, Nandurbar as per the judgment and order dated 12/02/2014 in Sessions Case No. 42 of 2011 is challenging the said conviction and sentence by the present appeal.

2. Prosecution case, in brief is that accused was married to deceased Ushabai about 8 years i.e. in 2004, prior to the incident. Their marriage was performed in Gujrat State after they eloped. After marriage accused alongwith his wife the deceased came to reside at Dhuli Pada in Nawapur taluka, Dist. Nandurbar. They have one son and daughter. At the time of incident deceased was working as Nurse in dispensary at Nawapur.

3. Further, it is the case of the prosecution that there used to be quarrel between the accused and the deceased and accused used to quarrel with the deceased and he used to consume liquor. On 02/09/2011 at about 05.30 pm while the deceased was cooking food, the

accused came home. He started demanding money from the deceased. She refused to give money. Thereupon, the deceased asked him why did he requires money and he told that he was to go to consume liquor. The deceased said him that she would not give him money to consume liquor. Thereupon, accused annoyed and he lifted kerosene can lying nearby and poured kerosene on her person. He then took up a piece of burning fire wood from the earthen stove and set the deceased on fire. She raised shouts and came out of the house. Nearby people gathered and put off the fire. Her father Arjun (PW-2) came there and took her to Nawapur Sub-District Hospital, initially by motorcycle and later by the autorikashaw. She sustained 89% burns. While she was admitted in the said hospital Police Head Constable Shaikh (PW-9) who was on duty in the said hospital recorded dying declaration/ complaint (Exhibit 41) of Ushabai the deceased at about 06.00 p.m. and she narrated the incident as above of sustaining burns to her implicating the accused, in presence of Dr. Gavit (PW-10). Upon receiving the said dying declaration

crime No. 114 of 2011 for the offence punishable under Section 307 of the IPC was registered against the accused in Nawapur Police Station and the investigation was started.

4. While the deceased was taking treatment in the hospital at Nawapur on the same day i.e. on 02/09/2011 at about 06.50 pm Sunil Ghoil (PW-1) Nayab Tahasildar, Nawapur recorded dying declaration (Exhibit 16) of the deceased in presence of Dr. Gavit (PW-10) and as per the said dying declaration also she implicated the accused. It appears that there after in the night of 02/09/2011 while she was admitted in the hospital at Nawapur, she disclosed to her father Arjun Gavit (PW-2) and Brother Vilas Gavit (PW-3) the incident as above of sustaining burns to her by the accused and then in the night at about 10.45 p.m. she was admitted in Civil Hospital, Dhule in injured condition. It appears that on the same day i.e. on 02/09/2011 the Investigating Officer API Sanjay Chavan (PW-13) visited the place of incident i.e.

house of the accused and prepared panchanama of spot of incident (Exhibit 19) in presence of Panchas and seized certain articles i.e. can of kerosene, earth mixed with kerosene, simple earth, burn pieces of clothes and half burnt wood.

5. While the deceased was admitted in Civil Hospital at Dhule in the night on 02-09-2011 her dying declaration (Exhibit 32) was recorded by Vinod Thakur (PW-6) Executive Magistrate at 23.30 hours (11.30 pm) stating role of the accused as referred earlier and said dying declaration was recorded in presence of Dr. Ravindra Sonwane (PW-8). It appears that on 03/09/2011 accused was arrested and Dr. Anil Gavit (PW-10) examined accused and found in all five injuries including two burn injuries on his person and issued injury certificate (Exhibit 43). Clothes on the person of the accused were also seized. It appears that on 03/09/2011 between 00.05 a.m. to 00.20 a.m. dying declaration Exhibit 35 of the deceased was recorded by PW-7 PHC

Khairnar in presence of Dr. Ravindra Chavan (PW-8) implicating the accused. The deceased succumbed to burns on 10/09/2011 in Civil Hospital, Dhule at 08.45 am. Thereafter, inquest panchanama was prepared by the Investigating Officer API Khairnar. The postmortem examination was conducted on the dead body by the team of two doctors in Government Medical College and General Hospital, Dhule and they had noticed 89% burns on the person of the deceased. Said doctors opined that death was due to septicemia following thermal burns and they had issued postmortem report (Exhibit 37). Offence under Section 302 of the IPC was added in the crime already registered against the accused. The seized articles as well as clothes of the accused were sent to the Chemical Analyzer by the Investigating Officer PSI Patil (PW-14). Report of Chemical Analyzer were collected. After completion of the investigation chargesheet was submitted in the court of Judicial Magistrate who committed the case to the Sessions Court at Nandurbar.

6. Charge was framed against accused for the offence punishable under Section 302 of the IPC by the Additional Sessions Judge, Nandurbar. Accused pleaded not guilty. He claimed to be tried.

7. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded. He has not examined any witness in defence. His defence was that due to strain relations with him father of the deceased falsely implicated him and that the deceased committed suicide out of anger. In the written statement filed at the time of statement under Section 313 of the Code of Criminal Procedure which is at page 73 of the papers the accused has stated that on that day he had brought meat of cattle and the deceased his wife did not like the said meat. Therefore, she was annoyed and she herself poured kerosene on her person and set herself on fire. His marriage with the deceased was love marriage and there was no dispute between them.

8. Prosecution has examined in all 14 witnesses and it has relied upon the written and oral dying declarations as referred earlier.

9. Considering the evidence adduced by the prosecution the trial court held that prosecution has proved the offence under Section 302 of the IPC against the accused beyond reasonable doubt and accordingly convicted and sentenced him for said offence as said earlier by the impugned judgment. Therefore, this appeal by the accused challenging the conviction and sentence recorded against him.

10. Mr. Sonar, learned counsel for the appellant/accused submitted that deceased was married to accused in 2004 without consent of her parents and therefore, parents of the deceased had a grudge against the accused. So also, prior to the incident there was quarrel between the brother (PW-3) of the deceased and accused when the motorcycle of the accused was involved

in the accident and therefore, the relations between the accused and PW-2 father of deceased were strain. Thus, according to the learned counsel accused has been falsely implicated in this case, though the death of the deceased is suicidal. It is submitted that case is based on four written dying declarations Exh. 41, 16, 32, and 35 respectively recorded by PWs- 9, 1, 6 and 7. These dying declarations are inconsistent in material particulars and therefore, said dying declarations cannot be relied upon to record conviction and sentence. This submission was made relying upon the decision of division bench of this court in ***Ramesh Rangrao Walsange & ors Vs State of Maharashtra, 2012 (4) Bom. C.R. (Cri.)782.*** In the said case death of the deceased was caused due to burns. Allegation made against the appellants was that after pouring kerosene on the person of the deceased, she was set ablaze. Two dying declarations were recorded by the Police Sub-Inspector and Special Executive Magistrate. There were material inconsistencies in both the dying declarations. It was

held that dying declarations are not in consonance with each other but they are at variance. It was held that manner in which deceased had described incident in question in detail and role attributed to appellants in respect of pouring of kerosene on her person and setting her on fire do not inspire confidence. Dying declarations do not find to be even truthful in nature. It is settled law that in case of multiple dying declarations same shall be consistent in respect of material aspects of incidents. After considering prosecution case in its entirety, physical condition of patient, medical opinion, percentage of burns and pains suffered by deceased on holding that dying declarations do not inspire confidence to convict all appellants conviction and sentence recorded against them for the offence punishable under Section 302 read with section 34 of the IPC was set aside by allowing the appeal.

. Learned counsel for the accused further submitted that PW-2 father and PW-3 brother of the

deceased are interested witnesses being relatives of the deceased and therefore their evidence implicating the accused on the basis of disclosure to them by the deceased is not believable. Thus, learned counsel for the accused submitted that there is substance in defence of the accused and the evidence adduced by the prosecution is not sufficient to convict the accused for the offence under Section 302 of the IPC. Therefore, according to learned counsel impugned conviction and sentence recorded against the accused is liable to be set aside and he is entitled to acquittal of the offence under Section 302 of the IPC by allowing the appeal.

11. Mrs. Patil/Jadhav, learned APP for the respondent/State submitted that the case is based on four dying declarations referred earlier and two oral dying declarations made to father and brother by the deceased. All these dying declarations are consistent in material particulars of the incident of pouring kerosene on the person of the deceased and setting her on fire

with the help of burning wood of earthen stove and therefore, on the basis of these dying declarations the prosecution has proved the incident. Father and brother of the deceased have denied defence of the false implication of the accused. There is no substance in the defence of the suicidal death of the deceased. It is submitted that the deceased was conscious and mentally and physically fit when all the four dying declarations were recorded as the doctors concerned have stated in this respect. Further it is submitted that death of the deceased was caused due to 89% burns as mentioned in the postmortem report (Exhibit 37). It is further submitted that circumstantial evidence in the form of C.A. report (Exhibit 50) shows that kerosene was detected on full pant and full shirt, partially burnt cloths pieces and earth mixed with dung and it shows that while pouring kerosene on the person of deceased kerosene was spread on the person of the accused. It is submitted that the evidence of independent witness PW-11 Lalitabai shows that she had seen the accused in the house at the

material time of incident and her evidence shows motive to accused for committing the offence. Thus, according to learned APP prosecution has proved offence under Section 302 of the IPC against the accused beyond reasonable doubt and thus the trial court has rightly held the accused guilty for the said offence and convicted and sentenced him for the said offence as per the impugned judgment and order and therefore there is no ground to interfere with the impugned judgment and order. Thus, according to learned APP appeal deserves to be dismissed.

12. Learned APP has relied upon the decision of division bench of this court (Coram S. S. Shinde and V. K. Jadhav, JJ) in Criminal Appeal No. 437 of 2013 decided on 06/08/2008 and the decision of the Apex Court in the case of *Laxman Vs State of Maharashtra 2002 DGLS (SC) 750* to support her argument that no certificate by doctor about consciousness of patient is necessary and there is no reason to discard the dying declaration

recorded by Executive Magistrate. She has placed reliance on the case of ***P.B.Radhakrishna Vs State of Karnataka 2003 DGLS (SC) 542*** regarding satisfaction of the officer who records the dying declaration.

13. We have carefully considered the submissions made by the learned counsel appearing for the accused and the learned APP and with their assistance we have perused the evidence adduced by the prosecution and the impugned judgment and order.

14. As regards death of the deceased post mortem report (Exhibit 37) which is admitted by the accused shows that the deceased sustained 89% burns and cause of her death is, "septicemia following thermal burns". The inquest panchnama (Exhibit 36) which is admitted by the accused also shows that the deceased died on 10/09/2011 at about 08.45 p.m. while she was taking treatment for the burn injuries in the Civil Hospital, Dhule. Thus, on the basis of above evidence it can be said that deceased

died due to septicemia following thermal burns and thus her death was not natural.

15. Case of the prosecution is that on 02/09/2011 at about 05.30 p.m. there was quarrel between the accused and the deceased. Accused poured kerosene on her person and set her on fire by the fire wood of the earthen stove while she was cooking food in the house and thus accused is responsible for her death. To prove the same the prosecution has relied upon four written dying declarations and two oral dying declarations made to her father and brother.

16. The first dying declaration is Exhibit 41. This dying declaration/complaint was recorded by police Head Constable Shaikh (PW-9) on 02/09/2011 at about 6.00 p.m. i.e. immediately after the incident, while he was on duty in Nawapur Primary Health Center. Said dying declaration was recorded by PHC Shaikh in presence of Dr. Anil Gavit (PW-10). The evidence of PHC Shaikh is

that on 02/09/2011, while he was on duty in Nawapur Primary Health Center patient Ushabai was admitted in said hospital and she was a burnt patient. According to him Dr. Gavit examined and treated the patient and then asked him to record her declaration. He stated that he recorded statement of deceased Ushabai and she told that while she was cooking food her husband asked her money for liquor. As she did not give him money he was annoyed. He therefore poured kerosene on her after taking kerosene can from near earthen stove. He then took a piece of burning firewood and set her on fire and due to it she sustained burns. She raised the shouts and came out. Nearby people then put off fire and brought her to hospital. He further stated that Exhibit 41-complaint shown to him is the same and its contents are correct. It bears thumb impression of Ushabai and also endorsement and signature of Dr. Gavit. In the cross examination he denied that father of deceased was present when he recorded dying declaration and he further denied that he is deposing false that doctor

examined deceased and opined that she was in a position to give statement. He also denied that deceased did not give any statement before him and she was not any position to give statement. He denied that he jotted down the complaint as stated by Arjun Gavit and that he is deposing false. Thus, nothing is found in favour of the accused in the cross-examination of PHC Shaikh (PW-9). Dr. Anil Gavit (PW-10) has stated that on 02/09/2011 when the deceased was admitted in the hospital at about 6.10 p.m. in Nawapur hospital he treated her and she was conscious and well oriented and was in a position to give statement. He stated that after completion of recording of statement, he made endorsement that the patient was conscious and oriented at the time of recording statement and then he signed below said statement (Exhibit 41). In the cross-examination he denied that the relatives of the patient were present when dying declaration/statement Exhibit 41 was recorded and denied that no statement was recorded in his presence. His evidence that patient was conscious and

oriented at the time of recording statement has not been specifically challenged in the course of his cross-examination. Thus, on the basis of evidence of PHC Shaikh and Dr. Gavit prosecution has proved dying declaration/complaint (Exhibit 41) which shows that on the date of incident i.e. on 02/09/2011 at 5.30 p.m. in the house at village Dhulipada while the deceased was preparing food when the accused demanded money to her for consuming liquor and the deceased denied he poured kerosene on her person from the can and set her on fire by the burning wood of earthen stove as mentioned in Exhibit 41.

17. The second dying declaration relied upon by the prosecution is Exhibit 16 recorded on 02/09/2011 after 06.45 p.m. in Civil Hospital, Nawapur by Sunil Gohil (PW-1), Nayab Tahasildar of Nawapur in presence of Dr. Gavit (PW-10). The evidence of Sunil Gohil (PW-1) is that on 02/09/2011 at about 06.45 p.m. he received phone call from Nawapur police station for recording dying

declaration of one patient admitted in Civil Hospital Nawapur. He collected letter from said police station (Exhibit 15). He visited Civil Hospital Nawapur and met the Medical officer. He obtained permission of the doctor for recording statement of patient. The patient was a woman. She disclosed her name as Usha Manoj Gavit. His evidence shows that he asked her how she got burns. She informed him that on that day in the evening she was present in her house alongwith her husband. At that time she had a quarrel with her husband. During quarrel her husband poured kerosene on her body and set her on fire with the help of burning wood from the stove (chooli). She further told that she ran out and her neighbours extinguished the fire. Her father had shifted her to the hospital. He stated that Exhibit 16 statement showed to him was recorded by him. In the cross-examination he admitted omission in respect of word 'burning'. Thus, it is clear that in Exhibit 16 the word 'wood' is mentioned and it is not mentioned that it was burning wood. He admitted that he had not obtained attestation for the

thumb impression of said woman. He denied that as the said woman was completely burnt she was not in a position to give her statement and further denied that he had obtained thumb impression of said woman on a statement which was already prepared by the police and that he is giving false evidence. Thus, nothing is found in favour of accused in the cross-examination of Nayab Tahasildar Sunil Gohil. The evidence of Dr. Gavit (PW-10) shows that PW-1 Sunil Gohil recorded statement of Ushabai. He was present at the time of recording of statement. During that time patient was in a position to give statement and he said so because he was present there all along recording of statement. He then endorsed on the statement and statement (Exhibit 16) shown to him bears his signature below the endorsement. In the cross-examination he could not tell exact time of recording statement by Nayab Tahasildar. He denied that Exhibit 16 and Exhibit 41 statements were falsely recorded at the instance of relatives of deceased Ushabai and those statements were not recorded in his presence. Thus, on

the basis of evidence of Dr. Gavit it can be said that statement/dying declaration (Exhibit 16) was recorded by PW-1 when the patient was conscious and it was recorded in presence of this doctor. Thus, on the basis of evidence of Sunil Gohil and Dr. Gavit it can be said that dying declaration (Exhibit 16) was recorded by Nayab Tahasildar Sunil Gohil after on 06.45 p.m. on 02/09/2011 and as per said dying declaration when there was quarrel between accused and the deceased at about 5.30 p.m. on 02/09/2011 the accused poured kerosene on the person of deceased and set her on fire with the help of wood of the earthen stove (Chooli).

18. The third dying declaration relied upon by the prosecution is Exhibit 32 recorded on 02/09/2011 by Executive Magistrate Thakur (PW-6) at Dhule, while the deceased was admitted in Dhule Civil Hospital in injured condition and it was recorded at about 11.30 p.m. after she was examined by Dr. Ravindra Sonawane (PW-8). The Executive Magistrate Thakur deposed that on the above

said date he received letter from Duly City police station to record dying declaration. Accordingly he went to Dhule Civil Hospital on 02/09/2011 at about 11.30 p.m. He met doctor on duty and requested him to give opinion whether patient was in a position to give statement. Doctor then examined patient Usha Manoj Gavit and opined that she was in a position to give statement. His evidence further shows that he then asked deceased Usha and she told him that on 02/09/2011 at about 5.00 p.m. she was cooking food, husband Manoj Gavit came drunk and raised quarrel with her. He then poured kerosene on her and set her on fire due to it she burnt. Her father Arjun Gavit admitted her in Dhule Civil Hospital. He stated about endorsement made by doctor on dying declaration (Exhibit 32) and about thumb impression of the deceased Usha Gavit. In the cross-examination he denied that Arjun Gavit father of the deceased was present when dying declaration was recorded. He also denied that deceased Usha was not in a position to sign below her statement. He also denied

that patient was not in a position to give statement and that patient had not given any statement before him. He also denied that patient did not make any complaint against accused and dying declaration was recorded as told by Arjun Gavit and accompanying police man. He denied that he is deposing false and that he prepared false dying declaration. Thus, nothing is found in favour of accused in the cross-examination of Executive Magistrate Thakur. Dr. Ravindra Sonawane (PW-8) in whose presence dying declaration (Exhibit 32) was recorded by the Executive Magistrate Thakur, has stated that on 02/09/2011 he was working as a Medical Officer at Civil Hospital, Dhule and at about 11.30 p.m. Executive Magistrate Thakur recorded dying declaration of deceased Usha Gavit. After Shri. Thakur came to hospital, he examined patient and found that she was in a position to give statement and then Executive Magistrate recorded statement/dying declaration (Exhibit 32). He stated that after completion of statement he again examined patient and found that she was in a position to give statement.

He stated that recording of dying declaration was started at 11.30 p.m. and it was completed at 11.55. p.m. In the cross-examination he was shown Exhibit 32 dying declaration. He stated that remark, "patient is conscious and able to give statement" was scribed before recording of dying declaration and remark below it was put up after its completion. He denied that due to treatment given at Nawapur and at Dhule and due to severe burns on neck patient was not at all in a position to give statement. So also, he denied that patient was not in a position to make signature and therefore her thumb impression was obtained. He denied that dying declaration (Exhibit 32) was not recorded in his presence and he is deposing false. He denied that he just blindly put his endorsement on the dying declaration recorded by Executive Magistrate. Thus, nothing is found in favour of accused in the cross-examination of Dr. Sonawane. Thus, on the basis of evidence of Executive Magistrate Thakur and Dr. Sonawane the prosecution has proved dying declaration (Exhibit

32) recorded on 02/09/2011 in Civil Hospital, Dhule of the deceased Usha between 11.30 pm to 11.55 pm and said dying declaration shows that on 02/09/2011 at about 5.00 p.m. while the deceased was cooking accused came drunk and picked up quarrel with her and then he poured kerosene on her person and set her on fire and due to that she was burnt.

19. The fourth and the last written dying declaration is Exhibit 35. It was recorded by police Head Constable Khairnar (PW-7) in presence of Dr. Ravindra Sonawane (PW-8) on 03/09/2011 while the deceased was admitted in injured condition and taking treatment in Civil Hospital at Dhule and said dying declaration was recorded between 00.05 a.m. and 00.20 a.m. on 03/09/2011. The PHC Khairnar has stated that while he was working in Dhule City Police Station on 02/09/2011 police station officer of said police station gave him order to record dying declaration of the deceased. Accordingly he went in Dhule Civil Hospital at

midnight and met Medical Officer. He requested Medical Officer to examine Usha Gavit and opined whether she was in a position to give statement. Doctor examined her and opined that she was in a position to give statement. Doctor endorsed on a plain paper and signed below the endorsement. He stated that he asked patient her name and she told her name as Usha Gavit. He then recorded statement of Usha Gavit as per her say. Contents of said statement (Exhibit 35) shown to him are correct. He obtained her thumb impression below the statement. He stated that doctor's name was Ravindra Sonawane. After completion of statement doctor again examined patient and put his endorsement. In the cross-examination he denied that Arjun Gavit was present during recording of statement of Ushabai and that she did not give any such statement before him. He also denied that she was not at all in a position to give statement. He denied that he falsely prepared the said statement in his office itself and that he is deposing false. Thus, nothing is found in favour of accused in the cross-examination of PHC

Khairnar. Dr. Ravindra Sonawane also stated that on 03/09/2011 at about 00.05 a.m dying declaration of Gavit was again recorded. At that time he again examined patient and found that she was in a position to give statement. He stated that Exhibit 35 dying declaration showed to him bears his endorsement. In the cross-examination he denied that patient was not at all in a position to give statement due to severe burns on neck and treatment given at Nawapur and at Dhule and that he just blindly put his endorsement on alleged dying declaration. He also denied that dying declaration (Exhibit 35) was not recorded in his presence. Thus, nothing is found in favour of accused in the cross-examination of Dr. Sonawane. Thus, on the basis of evidence of PHC Khairnar and Dr. Sonawane it can be said that prosecution has proved dying declaration (Exhibit 35). This dying declaration shows that on the date of incident i.e. on 02/09/2011 at about 5.00 pm while the deceased was preparing food in her house her husband the accused came consuming liquor. He picked up quarrel with

her and poured kerosene on her person and set her on fire with the match stick and then poured water on her person and went out of the house.

20. We have carefully perused and considered the dying declarations Exhibits 41, 16, 32 and 35. On perusal of dying declaration Exhibit 41 which is the first dying declaration it appears that on 02/09/2011 at about 5.30 p.m. while the deceased was cooking on the earthen stove, her husband the accused came and demanded money to her. When she asked him why he needs money he said her that he wants money for consuming liquor. Thereupon, she said him that she would not give money for consuming liquor. Then he was annoyed and he poured kerosene from the can on her person and set her on fire with the help of burning wood of the earthen stove and thus she sustained burns. On perusal of Exhibit 16 second dying declaration it is clear that incident took place on 02/09/2011 at about 5.00 p.m. in the house of accused and the deceased and when they were sitting near

the earthen stove there was quarrel between them. Accused poured kerosene on her person and set her on fire with the help of wood of the earthen stove. On perusal of Exhibit 32 third dying declaration it shows that on 02/09/2011 at about 5.00 pm while the deceased was cooking her husband accused came consuming liquor and picked up quarrel with her and at that time he poured kerosene on her person and set her on fire. On perusal of the fourth dying declaration Exhibit 35 it shows that incident took place on 02/09/2011 at about 5.00 p.m. and while the deceased was cooking on the earthen stove her husband accused came consuming liquor and picked up quarrel with her. He poured kerosene from the can on her person and set her on fire with the match stick and she sustained burns. He poured water on her person and went away. Her parents came and admitted her in Nawapur hospital. Thus, all the four dying declarations are consistent as regards material particulars i.e. happening of incident on 02/09/2011 at about 5.00 p.m. and they are also consistent as regards

the act attributed to the accused that there was quarrel between accused and the deceased and then accused poured kerosene on the person deceased and set her on fire. Some minor inconsistencies as referred earlier are there in the written dying declarations, but they are not sufficient to discard the dying declarations. Therefore, we find that when all the four dying declarations are consistent as regards material particulars of act of the accused of pouring kerosene on the person of the deceased and setting her on fire, we find that all the four dying declarations are trustworthy and believable. So also, there is consistency in dying declaration Exhibits 32, 35 and 41 that at the material time the deceased was cooking on the earthen stove. There is consistency in all the four dying declarations that there was quarrel between deceased and accused and accused poured kerosene on her person. So also, there is consistency in all the three dying declarations except Exhibit 35 that the accused set the deceased on fire by the wood of earthen stove.

21. Now, let us consider oral dying declarations made to father and brother of the deceased. The evidence of Arjun Gavit (PW-2) father of the deceased is that incident occurred nine months back. On that day one Chinabai Nura Gavit came at about 5.00 p.m. in his field to call him and she told him that Usha is set on fire. Therefore, he came to his house and Usha was residing near his house. He deposed that at that time he saw his wife was bringing Usha out from her house and she was in burnt condition. There was no rickshaw or other vehicle available in his village. Therefore, he called one Dilip who had got motorcycle. Dilip brought his motorcycle. They had taken her on motorcycle towards the hospital. She was not in a position to sit on motorcycle. On their way they saw one rickshaw. They stopped the said rickshaw and took Usha in the hospital. According to him in the hospital he had asked her what had happened with her. She told him that her husband accused was demanding money from her as he wanted to drink liquor. She refused

to give him money. Therefore, her husband took a can of kerosene and poured kerosene from it on her head and picked up one burning stick from the stove (chool) and set her on fire with the help of said stick. Therefore, her hands, legs, chest, face were burnt. In the cross-examination he admitted that three months prior to this incident motorcycle of Manoj i.e. accused was involved in an accident as it gave dash to one small boy. He denied that father of said boy is friend of his son Vilas (PW-3). He admitted that due to said accident there was altercation between his son Vilas and accused. He denied that relations between his son Vilas and accused were strained. Omissions in his statement before police regarding the fact that after he reached his house he saw his wife taking Usha out of house, he had called one Dilip to bring his motorcycle and regarding pouring kerosene on the head of Usha have been brought on record in the course of his cross examination. He denied that his daughter had performed marriage with accused against his wish and his financial condition was

poor and therefore, he did not like the accused. He also denied that his relations with the accused were strained and therefore he is giving false evidence against him. Thus, nothing is found in favour of the accused in the cross-examination of father of the deceased. Thus, on the basis of his evidence it can be said that immediately after the incident he came to the house of the deceased, he saw her in burnt condition and he shifted her to Nawapur hospital and in the hospital deceased disclosed to him that her husband the accused was demanding money from her for consuming liquor and when she refused he poured kerosene from the can on her person and set her on fire with the help of burning wood/stick of the earthen stove.

22. Vilas Gavit (PW-3) is brother of the deceased. Deceased made oral dying declaration to him immediately after the incident in Nawapur hospital. According to him incident took place on 02/09/2011. On that day he had gone to Nawapur as he wanted to open an account in the

Bank. At about 5.00 p.m. his friend Rajendra phoned him and informed him that his sister is burnt and she was admitted in hospital at Nawapur. Therefore, he rushed to the said hospital. He saw that her hands, legs, stomach, face and chest were burnt. According to him she told him that her husband demanded money from her as he wanted to drink liquor, she refused to give money, so he got angry, he took kerosene and poured it on her body and he picked up one burning stick from the choola and set her on fire. He stated that from Nawapur they had taken her to hospital at Dhule and on 10/09/2011 she died in the hospital. Though he has been cross-examined at length on behalf of accused nothing is found in favour of accused in his cross-examination. Thus, there is no reason to disbelieve evidence of this witness and on the basis of evidence of this witness it can be said that deceased made oral dying declaration to her brother/this witness that on 02/09/2011 accused poured kerosene on the person of deceased and set her on fire as alleged by the prosecution. When the evidence of both Pws- 2 and 3

father and brother of the deceased referred to above is consistent and believable as regards the act of the accused of pouring kerosene on the person of deceased and setting her on fire with the help of burning wood of earthen stove, simply because they are relatives of deceased it can not be said that their evidence is not believable, as argued by the learned counsel appearing for the accused.

23. There is evidence of independent witness Lalitabai Gavit (PW-11) who was residing in front of house of accused at the material time of incident. Her evidence is that accused resides in front of her house. Deceased Ushabai was his wife. They used to quarrel. Accused used to demand money from her for consuming liquor. Incident took place on second day at about 5.00 p.m. She was in her house. She heard the shouts of Ushabai. She rushed to their house. Accused had pressed mouth of Ushabai. Ushabai had burns. People in the lane gathered there. In the cross-examination she denied that

she is deposing false at the instance of Ushabai's brother and father and her husband. She also denied that Ushabai committed suicide. Thus, from the evidence of this independent witness an inference can be drawn that immediately after the incident of sustaining burns to deceased Ushabai. This witness had gone to the house of deceased and accused and she saw burns to Ushabai and she also saw the accused present in the house while he was pressing mouth of Ushabai by necessary implication to prevent her from making shouts. Thus, evidence of this witness corroborates the written and oral dying declarations referred earlier about involvement of the accused in the incident.

24. The next is the evidence of Dr. Anil Gavit (PW-10) recording examination of accused on 02/09/2011 immediately after the incident and finding of burn injuries on his person as per certificate Exhibit 43. Dr. Gavit has stated that on 02/09/2011 he examined accused Manoj Gavit at about 9.00 p.m. in Nawapur Sub

District Hospital and found following injuries on his body:-

- 1) Superficial burns on dorsum of palm, about 1%. Nature of injury superficial; age: 1 to 2 hours, simple in nature.
- 2) Contusion over nose swelling present, tenderness present, simple injury, one to two hours.
- 3) Contusion over right eye region-simple; one to two hours.
- 4) Superficial burn over right knee region; about 1% - simple; one to two hours.
- 5) CLW over left parietal region, about $\frac{1}{2}$ cm x $\frac{1}{2}$ cm, $\frac{1}{2}$ cm, simple injury; one to two ours.

According to Dr. Gavit he issued certificate Exhibit 43. The evidence of Dr. Gavit regarding examination of accused and finding of burns on the person of accused as per certificate Exhibit 43 is not shattered in his cross-examination. Above referred injury Nos. 1 and 4 shows that accused sustained burns

on dorsum of palm and over right knee region and age of said injuries was within 1 to 2 hours. Thus, these fresh burn injuries show presence of accused at the spot of incident when the deceased sustained burns on 02/09/2011. So also, these injuries show involvement of the accused in the act of pouring kerosene on the person of deceased and setting her on fire. Accused has not given explanation of these burn injuries noticed on his person by Dr. Gavit. In fact, the accused should have given explanation of these injuries. Failure of the accused to give explanation of cause of these burn injuries is a circumstance against on the basis which an inference can be drawn that he sustained said burns when he poured kerosene on the person of deceased and set her on fire.

25. The prosecution has relied upon the circumstantial evidence in the form of seizure of clothes on the person of accused. The prosecution has proved seizure of clothes of accused as per the

panchnama Exhibit 24 on 02/09/2011 on the basis of evidence of the Investigating Officer API Chavan (PW-13). Exhibit 50 report of the Chemical Analyzer shows that on Exhibit (1) full pant and Exhibit (2) full shirt of accused kerosene residual was found. This shows that when the accused poured kerosene on the person of deceased from the can (Exhibit 4) kerosene was spread on his clothes and this shows his involvement in the act of pouring kerosene on the person of deceased and setting her on fire. Thus, circumstance of finding of kerosene on the clothes of accused corroborates written and oral dying declarations regarding involvement of accused.

26. For all the reasons discussed above on the basis of written dying declaration Exhibits 41, 16, 32 and 35 and oral dying declarations made to PW-2 father and PW-3 brother of the deceased and on the basis of circumstantial evidence referred to above an inference can be drawn that on 02/09/2011 at about 5.00 p.m. in his house the accused poured kerosene on the person of

the deceased and set her on fire and therefore she sustained 89% burns and as a result she succumbed to said burns on 10/09/2011. Thus, the said act of the accused is culpable homicide amounting to murder punishable under Section 302 of the IPC. From the act of the accused of pouring kerosene on the person of the deceased and setting her on fire it can be said that he had intention as well as knowledge that by the said act there would be death of the deceased. There is no substance in the defence of the accused that death of the deceased is suicide. Thus, we hold that death of the deceased is homicidal and accused is responsible for her death. Thus, we find that the trial Court has rightly appreciated the evidence adduced by the prosecution and rightly held the accused guilty for the offence under Section 302 of the IPC and rightly sentenced him as mentioned earlier in the opening paragraph of this judgment. We see no error committed by the trial Court in appreciation of the evidence. Thus, there is no ground to interfere with the impugned judgment and order

of convicting and sentencing the accused for the offence under Section 302 of the IPC. Therefore, appeal being devoid of merits, the same is liable to be dismissed. Accordingly appeal is dismissed.

27. In view of dismissal of appeal, Criminal Application No. 6282 of 2017 for suspending the sentence is disposed of.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]