

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 661 OF 1999

The State of Maharashtra	]	
(At the instance of Karveer Police Station,	]	
District Kolhapur.)	]	...APPELLANT (Orig. Complainant)

Versus

Mahadeo Lahu Patil	]	
Age, about 24,	]	
Occ.: Private Service,	]	
R/o. Mhalsavade, Tal.: Karveer,	]	
Dist. Kolhapur.	]	...RESPONDENT (Orig. Accused)

Mr. V.B. Konde – Deshmukh, APP, for Appellant – State.
Ms. Madhavi Tavanandi for Respondent.

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

RESERVED ON : 14th JANUARY 2020
PRONOUNCED ON: 22nd JANUARY 2020

JUDGMENT (PER S. S. SHINDE, J.)

1. This Appeal is directed against the Judgment and order dated 31st October, 1998 passed by the IIInd Additional Sessions Judge, Kolhapur in Sessions Case No. 196 of 1997 acquitted the Accused – Respondent herein for the offences punishable under Sections 302, 343 and 354 of the Indian Penal Code.

2. The prosecution case, in nutshell, is as under.

The deceased (Kamal) was the daughter of Dinkar Nikam residing at village Mhalsavade, Taluka, Karveer. At the relevant time, she was student studying in 9th Standard. Her age was about 16 years. She used to go to her school at Kanchanwadi situated near from her village. Previously the accused had no contact with the deceased. Accused is also from the same village and was serving as peon in the milk dairy styled at Dhakeshwar Milk Dairy of the same village.

3. The incident occurred on 31st August, 1997 at about 2.00 p.m. in the house of one Tukaram Patil. On that day it was Sunday. Being holiday Kamal at about 2.00 p.m. was proceeding to the house of her friend Balabai Savekar. When She was crossing the door of the accused Mahadeo, he instantly came before her and pressed her mouth with cotton glow. He dragged her towards the house of her uncle Tukaram Patil and taken in the rear side portion of the said house. The deceased Kamal was very much frightened and told him that she is not intending to love her, and she belongs to poor family and the accused should not play any mischief with her. However, there was scuffle between them. The accused on said occasion made attempt to outrage her modesty. During the course of resistance her bangles were broken. The accused then forced her to take some tablets to be used as

tranquilizer. He also poured kerosene on her clothes and set her ablaze. Nobody was there in the house. Deceased started raising shouts. On this occasion one Ankush, who is brother of deceased Kamal, aged about 12 years, was playing in front of his house along with her brother Vishnu. One Sada raised shouts “काय पेटले ? काय पेटले ?”. This witness i.e., Ankush saw fire in the house of Balu. He rushed towards said house. However, the house from front side was found closed and, therefore, they entered in that house from the house of one Sada. He saw that his sister was caught by fire and was found lying on the ground. Then, he immediately along with his brother Suresh had gone towards his field by name Lundur to call his father and other relatives. He on reaching to the field, which is at some distance from the village, told that Kamal has been caught by fire in the house of Balu. Then they all came near that house. Many persons were found gathered in front of the house. Vishnu (PW 5), the uncle of Kamal also entered in the house from its rear side. They saw that the accused Mahadeo was also present on the spot and ran away on seeing them. On asking Kamal as to what happened, she told that when she was proceeding towards the house of her friend Balabai, she was dragged by the accused Mahadeo towards said house, and accused told that she should marry him, and when she refused the proposal, he gave threats to outrage her modesty. She also told that she pushed him. However, the accused by pouring kerosene set her ablaze.

4. On the say of deceased Kamal that there is severe pain due to burning, water was poured on her person by Bhiku. The clothes were of terricot and were stuck up to her body. The bangles were found broken. Front portion of the house of Madhukar was latched from inside and all the persons were in the rear side portion of the house. Daji (PW 6), who is brother of Dinkar and Vishnu, also inquired with Kamal as to what happened and, she repeated the same story.

5. Keraba Patil (PW 7) who is maternal uncle of the deceased Kamal, when heard hue and cry in that house, entered in the said house by crossing two Japtas and inquired with Kamal as to what happened? Kamal told him that the accused forced her to consume poisonous tablets and by pouring kerosene on her person set her ablaze.

6. Bhagwan Patil, the cousin brother of Kamal, on knowing that Kamal is burnt in said house, went there and inquired with her, and she repeated the same story before him. Thereafter, after about one hour a jeep was brought and the injured was carried to C.P.R. Hospital. Dr. Avati (PW 10) started to give treatment to Kamal. He immediately gave intimation about Kamal to the Police Station of C.P.R. Chowky. Satappa Bhui (PW 13), Head Constable, on getting the information to this effect immediately had gone in the checking room itself and recorded her statement (Exh. 27) as stated by her.

Keraba Patil (PW 7) who is maternal uncle of the deceased attested thumb impression on the statement. Dr. Avati (PW 10) also passed endorsement on the statement that the Kamal is in condition to give statement. He immediately sent this statement to Karveer Police Station.

7. Bhauso Gavali (PW 14), who was P.S.O. of that police station on the basis of Exh. 27 registered the offence vide CR No. 170 of 1997 under Sections 342, 354 of the Indian Penal Code and handed over the investigation to P.I. Powar (PW 17).

8. On recording of Exh. 27, Suresh Salokhe (PW 2), the Special Judicial Magistrate on getting the information from the constable reached to the hospital and also recorded the dying declaration of deceased Kamal. Same facts, which were stated in Exh. 27 were repeated in the statement before the Magistrate. Dr. Avati (PW 10) again has passed an endorsement on the statement recorded by Special Judicial Magistrate that the patient through out recording the dying declaration was conscious to give her statement. The copy of said statement i.e. dying declaration was handed over by the Magistrate to the concerned constable, who recorded the Exh. 27 and has sent the same along with it to Bhauso Gavali (PW 14). Exh. 27, the statement recorded by the police as well as Exh. 35, the dying declaration recorded by the Magistrate were handed over to P.I. Powar (PW 17) for the purpose of investigation.

9. On getting investigation with him P.I. Powar (PW 17) visited C.P.R. Hospital and observed the condition of the injured. He confirmed that she is alive and admitted in the hospital. He also confirmed that the accused has also been admitted in the hospital by the police patil of that village and is unconscious. He kept two police constables for, the purpose to keep watch on the accused. Then he proceeded towards place of incident at Mhalsavade, and prepared the panchanama of place of offence. In all 11 articles were attached from the spot such as two kerosene lamps prepared from empty bottles, broken pieces of bangles etc. On the next day, the clothes of the deceased were produced by Balwant Singhan (PW 15) and those were attached under panchanama. Then he recorded statement of Vishnu Nikam. He also recorded the statement of number of witnesses on 02.09.1997 and 03.09.1997. On getting inquest panchanama on 03.09.1997 on death of deceased, he added Section 302 of the Indian Penal Code against the accused and registered the offence under the said provision. Then he recorded supplementary statement of number of witnesses.

10. On 05.09.1997 on discharge of the accused from the hospital, P.I. Powar (PW 17) arrested the accused vide panchanama Exh. 29. On 19.09.1997 all the attached articles were sent to C.A., Pune for analysis including viscera preserved.

11. On completion of the investigation P.I. Powar (PW 17) has sent the charge sheet against the accused to the Court of Chief Judicial Magistrate, Kolhapur. The learned Chief Judicial Magistrate, Kolhapur as the main offence charged against the accused is exclusively triable by the Court of Sessions, committed the case to the Court of Sessions, Kolhapur.

12. After recording the evidence and full fledged Trial, the Trial Court, acquitted the Respondent – Accused. Hence, this Appeal filed by the State.

13. Learned APP appearing for the Appellant – State relying upon the evidence of prosecution witnesses submits that, there is overwhelming evidence brought on record by the prosecution to prove its case. Learned APP invites attention of this Court to the two written dying declarations so also evidence of other witness including four witnesses i.e. PW 3, 5, 6, and 7 before whom oral statement / declaration was given by the patient and submits that, Criminal Appeal deserves to be allowed.

14. On the other hand, learned counsel appearing for the Respondent / Accused invites attention of this Court to the findings recorded by the Trial Court and submits that, said findings are in consonance with the evidence brought on record. Learned counsel submits that, the prosecution

evidence suffers from serious contradictions, improvements, omissions and also exaggeration and therefore, said evidence is not trustworthy and the Trial Court has rightly disbelieved the prosecution Case. Learned counsel in support of her contentions pressed into service exposition in the case of Rangaiah Versus State of Karnataka¹ and State of U.P. Versus Shishupal Singh². Therefore, learned counsel appearing for the Respondent submits that, Appeal may be rejected.

15. It appears that the date of alleged incident is 31st August, 1997. On the date of alleged incident two written dying declarations were recorded. The Special Judicial Magistrate has recorded the dying declaration after recording the statement by the police at Exhibit 27. First, we would like to discuss the dying declaration recorded at Exhibit 27. To prove the said dying declaration at Exhibit 27, the prosecution has examined Satappa Pandurang Bhoi (PW 13). In his deposition he stated that at the relevant time he was attached to Karveer Police Station. On 31st August, 1997 he was on duty in between 1.00 p.m. to 1.30 p.m. At about 5.00 p.m. he was informed by the Doctor that one burn patient has been admitted in the hospital, the name of the patient was Kamal Dinkar Nikam. The medical officer also stated this witness to inform the Executive Magistrate about the said fact. He sent

1 (2008) 16 SCC 737

2 1992 Supp (3) SCC 60

constable to call the Executive Magistrate. He immediately went near the girl Kamal and in presence of doctor recorded her statement. As the hands of Kamal were burn she was unable to make signature and therefore, her thumb impression was obtained on statement. One Kerba Patil had attested the thumb impression of that girl. The doctor has passed endorsement below the statement after completion of recording the statement. He has stated further details about manner in which dying declaration was recorded. He stated that, on completion of statement of Kamal recorded by him, the Executive Magistrate came on the spot and recorded another dying declaration of Kamal.

16. During his cross-examination he stated that, Bhagwan Patil was not present at the time of admitting of the patient who came later on when the patient was admitted in the emergency ward. There is a separate burn ward in C.P.R. Hospital. He has not seen any medicine applied on the burns of patient on entering in the emergency ward. He did not ask doctor as to whether any injection was given to patient or not. He has not mentioned the timing at which he started recording of statement but the same has been mentioned by the doctor. The said timing mentioned by the doctor is at 6.00 p.m. It took about 30 minutes for him to record the statement. He took endorsement of the medical officer in the beginning of the dying declaration so also at the end of the dying declaration. The patient was found burnt throughout from top to

toe. He has not asked the doctor to issue certificate about inability of the patient to make the signature. He gave an endorsement on completion of the recording of statement. Police Constable Indulkar was sent by him to call the Magistrate. The Magistrate came within 5 to 10 minutes. He was also confronted with copy of the dying declaration recorded by the learned Magistrate. It has been mentioned in the statement of Magistrate that the recording of the dying declaration has been started at 6.05 p.m. and was completed at 6.40 p.m. He admitted that he has not inquired with the doctor or Magistrate about variations in the timing of the statement recorded by him as well as by the Magistrate. He stated that at the time of obtaining thumb impression of injured, he called Keraba to put attestation on the statement. However, no endorsement to this effect is there on the statement recorded by him.

17. It appears that, timing of completion of recording statement of the patient by this witness Satappa Bhoi (PW 13) is at 6.40 p.m. According to him after he recorded the statement of patient the Magistrate commenced recording of the dying declaration of the patient Keraba however, it appears that on the dying declaration recorded by the Magistrate, the timing of starting of recording of dying declaration is mentioned 6.05 p.m. As already observed Satappa Bhoi (PW 13) completed the recording of statement / dying

declaration of Kamal at 6.40 p.m. therefore, it creates serious doubts about truthfulness of the statement of both the witness i.e. Ankush Daji Nikam (PW 3) and the Magistrate. It appears that, at the time of obtaining thumb impression of patient he called Keraba to put attestation on the statement.

18. At this juncture it would be relevant to discuss the deposition of Keraba Ganpati Patil (PW 7). In his deposition before Court he stated that, police came in the hospital in emergency ward. Kamal was admitted in said ward and police recorded her statement. He was present on the spot. He heard entire statement recorded by the police. Kamal put thumb impression and Keraba has put attestation on the statement. He identified his signature on the said statement. Therefore, it is abundantly clear that, while recording statement / first dying declaration of Kamal, Keraba was present there. Therefore, the possibility of tutoring by said witness to her cannot be ruled out. It is well established procedure that while recording the dying declaration except medical officer and the person who is recording dying declaration, third person should not be present, so as to rule out the possibility of tutoring or influencing patient while recording dying declaration.

19. The prosecution has examined Suresh Baburao Saloke (PW 10) the Special Judicial Magistrate who has recorded the second dying declaration of the patient. He stated that on 31st August, 1997 at about 5.45 p.m. Police

came to his house with some intimation told him that a girl in burnt condition has been admitted in C.P.R. Hospital and he has to record the statement then, he immediately went to C.P.R. Hospital. On reaching to C.P.R. Chowki he was informed that the patient is in room on the ground floor itself. Accordingly, he entered in the said room and saw Chief Medical Officer and disclosed his identity to him. The said police officer shown the patient to him for the purpose of recording statement. Then he obtained endorsement from the doctor that patient is in a position to give statement. Then he put certain questions to patient and also disclosed his identity to the patient. He asked patient her name, address, age etc. Patient stated that while she was proceeding towards the house of her girl friend she was caught by the accused Mahadeo and by lifting her she was carried by the accused in the house of one Tukaram Patil. Whatever was stated by her was reduced by him in her own language. The said writing was read over to patient. She admitted the contents to be true and correct. Then he obtained thumb impression of her left hand below said statement i.e., dying declaration. The said thumb impression was attested by him. Then medical officer Dr. Avati put his endorsement about consciousness of patient. The copy of the said dying declaration was handed over to the police constable of police chowki.

20. During his cross-examination he stated that, he passed endorsement of production of envelop in the concern Court. He wrote on it i.e. envelop, to be produced in the Court of IInd Additional Sessions Judge. Envelop at Exhibit 35-A was shown to him, he stated that no such endorsement is their on said envelop. He stated that, C.P.R. Hospital is at a distance of 4 km from his house. He mentioned the timing at the Yadi at C.P.R. Hospital. He stated that, he had not mentioned introductory part in the dying declaration i.e. of coming of police to him and handing over yadi etc. He mentioned in the dying declaration that, no police or relatives were their near the patient. This fact has not been mentioned in the beginning of the dying declaration. He started recording dying declaration at 6.05 p.m. on passing of endorsement by the doctor. When he was confronted statement of patient at Exh. 27 from the record of the Court, and in particular endorsement of the doctor at the said dying declaration mentioning time as 6.10 p.m; he replied that, there was over writing in mentioning 10 minutes. He stated that, it has not happened in his presence that statement was recorded by the constable, and the endorsement was given by the doctor. The endorsement at Exh. 27 by the doctor is not in his presence. He did not ask the patient as to whether her relatives or police are present near her or not. Portion marked "A" i.e. last para of the dying declaration has been mentioned by him without asking to the patient. On query by the court he admitted that Portion Mark

“A” there is no endorsement of reading over the said contents i.e., portion mark ‘A’ to the patient. He admitted that there was no reason for him asking about the presence of police or relatives, when he was knowing that nobody except himself or doctor were present near her.

21. It is clear from his evidence that he commenced recording of statement / dying declaration at 6.00 p.m. As already we have discussed the evidence of Satappa Bhoi (PW 13) who recorded statement at Exh. 27, wherein he stated that at 6.45 p.m. he completed the recording of statement of the patient. Therefore it creates serious doubt about authenticity of recording of such statement’s by the police officer and the magistrate in view of complete overlapping of time. We would make further comment’s about the evidence of Satappa Bhoi (PW 13) and Suresh (PW 10) after discussing the evidence of Medical Officer Dr. Shivaji Avati (PW 12).

22. The prosecution has examined Dr. Shivaji Annasaheb Avati (PW 12). In his deposition he stated that, on 31st August, 1997 he was Chief Medical Officer attached to C.P.R. Hospital. At about 05.00 p.m. the patient by name Kamal Nikam was brought to the hospital in burnt condition. He gave her treatment. He informed police so as to record the statement of patient. Accordingly, police recorded the statement. He was present while recording the said statement by the police. He gave certificate at the end of the

statement on same paper on which statement was recorded. At 6.00 p.m. he gave the endorsement that the patient is medically fit to give her statement. Thereafter, Magistrate came in the same room for recording the dying declaration of patient. He also requested to give endorsement accordingly, he gave endorsement. He mentioned the date and timing as 31st August, 1997 at 6.05 p.m. On completion of dying declaration again he gave endorsement at the end of the statement and signed the same. The timing of completion of recording the dying declaration is mentioned as 6.45 p.m. He was present throughout while recording the statement by the Magistrate. While recording the statement the patient was fully conscious.

At about 7.00 p.m. patient by name Mahadeo Lahu Patil was also brought to casualty. He was brought by the police. Initial treatment was given by him. He has brought the case papers of the patient. The said patient came with the history of unknown poisonous tablets. He had one injury on arital region i.e. C.L.W.. The said injury was fresh.

23. During his cross-examination he stated that, first 5 pages of the case papers are concerned with the patient remaining in the casualty. His attention was drawn towards history of accidental burns when patient was brought to the hospital at about 3.00 p.m. He stated that, two police persons were there at the time of recording first statement by the Police Officer

Satappa Bhoi (PW 13). Before recording the statement police persons inquired with him as to, whether patient is oriented and in condition to give statement. No certificate to that effect on the said occasion was given by him. The certificate is at the bottom of the statement recorded by Satappa Bhoi (PW 13). He admitted that there is over writing in the timing mentioned by him below his signature against the certificate. The timing has been mentioned with the correction in day. There is overwriting in the timing mentioned by him in the statement recorded by the Magistrate. It has been corrected by him. When he mentioned the timing as 6.05 p.m. on the statement recorded by Magistrate the statement was yet to be recorded by the Magistrate. At the time of recording of statement by the police, one relative of the injured was there. No relative was present at the time of recording of statement by the Magistrate. He stated that in the beginning the Magistrate has given blank paper before him instead of effecting any writing on it at that stage. He has not mentioned in the endorsement that he was present throughout the recording of the dying declaration. The patient was well oriented and conscious.

24. Therefore, it is abundantly clear that, the endorsement given by the medical officer is only at the end of the statement, secondly, there is overwriting by him in the said endorsement inasmuch as the corrections are

made in respect of timing of recording the dying declaration. Thirdly, he stated that one of the relative of patient and two police persons were present when the statement was recorded by the police i.e. Satappa Bhoi (PW 13).

Therefore, keeping in view the discussion made herein above the evidence of aforesaid witnesses does not inspire confidence so as to base the conviction of the Respondent / Accused on the basis of such dying declarations which suffer from serious infirmities. There is no opportunity to the accused for cross-examination of a person whose dying declaration has been recorded and, therefore, the Court has to be careful while scrutinizing the evidence in relation to dying declarations.

25. It appears that, statement of relatives of the patient were recorded by the police on 1st September, 1997. The prosecution claimed that Kamal gave oral dying declarations to her close relatives. It would be appropriate to discuss the evidence of Vishnu Nikam (PW 5), uncle of the Kamal. He stated in his examination-in-chief that, he has three brothers by name Dinkar, Krishna and Daji. Houses of all the brothers are adjacent to each other in same area i.e. Wadi Galli. Suresh is his son. Ankush is son of his brother Daji. Kamal is daughter of his brother Dinkar. Kamal used to go to school at Kanchanwadi. She was in 09th standard. Accused resides near his house beyond two to three houses. He was serving as peon in Dhakeshwar dairy. Kamal died last year on

Sunday. He remembers that it was day of 31st August, 1997. On that day he took his food at about 9 to 9.30 a.m. On this occasion one person came to sell balloons in front of his house. He purchased two balloons for Rs. 4/-. He gave the same to Suresh and Sandip then he and his wife had gone to their field know as Lendur. Daji and his wife had also come with them to the field of Lendur. He told the children that they may take the food on their own accord. Then they started manual work in the field. At about 2 p.m. Ankush, Suresh and Sandip came to their field to call them. They told that Akka has been brunt in the house of Balu. Akka means Kamal, daughter of his brother. They also told that they should come immediately. They immediately stopped the work and came towards the spot. They entered in the house of Tukaram Sadu from the door of parada situated towards rear side of the house. They entered in the kitchen of that house, Kamal was found sitting near the wall by taking the knees near the body in burnt condition. Mahadeo was also present on that spot. On seeing them he ran away towards the side of lane. He asked Kamal as to what happened ? Kamal told that there is no mistake on her part as she was proceeding towards her friend by name Balabai Savekar. She told that on way Mahadeo dragged her in the house of Balu. She also told that Mahadeo told her in vernacular 'Majhyavar Prem Kar'. She also told that she will not love him. She also told that Mahadeo told her that he will outrage her modesty. She also told that she pushed him, and thereafter Mahadeo by

pouring kerosene set her on fire. She asked Vishnu Nikam (PW 5) to pour water on her person. Kamal used to call him as Anna. He took Ganj containing some water in it and poured on the person of Kamal. The clothes were of terricot and were stuck up to her person. All the bangles of her were broken. Immediately he went to the house of police patil. Police patil had gone to his field. Front door of house of Mhadu were latched from inside and therefore, they were standing in rear side portion i.e. Parada of his house. Then Keraba brought one jeep and in same Kamal was carried to Kolhapur. Then at about 5.00 p.m. by S.T. Bus he came to C.P.R. Hospital. Kamal thereafter died on Wednesday.

26. During his cross-examination he stated that, all his family members on that day had gone to police station, “he stated before the police that Mahadeo was present, where Kamal was found and latter on he ran away from the spot. I cannot give any reason as to why this fact is not appearing in his statement before the police. He further stated that, thereafter no senior police officer from the police department came to him in connection with the said incident. On death of Kamal his statement was not recorded by the police. He stated that, his relations with accused Mahadeo and his family members were cordial before the incident. They used to visit house of each other. Kamal used to go to school by Kanchanwadi which is at distance of 1 kilometer from

their house. They had no quarrel with the persons residing in adjacent locality of their house. At the relevant time in adjoining fields other persons were working however, he did not narrate the said incident to them. He stated that, they went to the rear side of the house where incident had taken place. The office of Grampanchayat is situated at the distance of 100 feet from the house, where incident had taken place. Some persons were found present on the rear side of the house. Daji was also with him when he entered in the house. He had not seen mother of Mahadeo in that room on entering in the said room. They have not raised any shouts on seeing Kamal in the burnt condition. They raised shouts on coming out of the house. About 20 to 30 persons were gathered on hearing their shouts. All the persons were from wade galli. House of Sutar, Vithu Patil and Sarnail are situated in front of said house. Before their arrival persons from said families were found standing in front of the house where incident had taken place.

27. The prosecution also examined Ankush Daji Nikam (PW 3). It appears that his age was 13 years at the relevant time. It appears that at the relevant time he was in Vth standard and was prosecuting his studies in the school by name Vidya Mandir, at Mhalsavade. He stated that, Dinkar Nikam father of Kamal is his uncle. On the date of incident there was holiday to the school. His parents had gone to the agricultural field. He himself and Suresh

were in the house. Suresh is son of Vishnu. Vishnu is brother of his father. He along with Suresh were playing with balloons in front of door of house of Sada Patil who raised shouts in vernacular “काय पेटले ? काय पेटले ?” There was fire in the house of Balu son of Tukaram. They entered in the house of Balu from parada. He saw that his was burning. She was in the kitchen. She was found lying. Mahadeo and his mother Bhagu were present on the spot i.e. in the said room. Then he himself and Suresh had gone to call his father from his agricultural land known as lendur. He told his father that Akka i.e. Kamal is caught by fire in the house of Balu. Then they came towards their house. Later on patient was brought to the Kolhapur.

28. During his cross-examination he stated that, there are 69 students in his class. School is situated in side the village. Kamal used to go to school for Kanchandwadi. He stated that for about 50 boys are their in the school from his galli. Those boys were playing at some distance from spot. He further stated that there are houses of Bapu Patil, Vilas Nikam and Laxman Nikam behind their house. All these houses are adjacent to each other. He stated that, they have to cross Laxmi galli from their house to go towards rear side of their house. The office of G.P. is towards eastern side of these houses in the area of Laxmi Galli. His field known as lendur is at distance of 1 mile from his house. His field is situated towards the side of Laxmi Galli. House of Tukaram Patil is

at a distance of 10 to 15 feet from the office of Grampanchayat. He stated that at the relevant time some houses were closed and some houses were open. House of Balu and Sada were open. He stated that house of Balu was open from back side but was closed from front. Their relations with the persons residing in adjacent locality are cordial. Nobody from the boys, who are playing near the house wherein alleged incident had taken place came with them when they heard the noise of Sada Patil. His relations with Sada Patil are not good since from last year. No smoke was seen by them before hearing shouts of Sada Patil. They have not heard any noise coming from the house of Balu Patil. They have not made any attempt to open house of Balu Patil. If front door of the house of Balu Patil is closed, it is not possible for a person from Wadi Galli to see as to whether the rear side door is closed or otherwise. One has to go cross the office of Grampanchayat to go towards rear side door of Balu Patil. He did not go to the Grampanchayat Office so as to request the persons present there to look into the matter as to what incident is going on. On that day they had not gone to the side of Grampanchayat. On way to his field he did not disclose the incident to anybody. Kamal was not found burning at the time when he saw her. Even he had not disclosed this incident to anybody near his house even to his near relatives residing in lane. On informing the incident to his mother and father all of them came together towards spot.

29. Upon careful perusal of the deposition of this witness, he stated that, he saw that his sister was caught by fire. She was in kitchen of the house of Balu. However, in the cross-examination he stated that Kamal was not found burning at the time when he saw at her. Therefore, his version about witnessing actual incident of burning of Kamal is totally different in cross-examination. His conduct that, he did not disclose about alleged incident to boys found playing their so also other persons immediately available in the nearby houses and locality appears to be unnatural. It is also clear from his evidence that there are 50 boys studying in the school, who are residing in the said galli, and some of the boys were playing nearby the house wherein an alleged incident has taken place, and nobody accompanied him when he actually went to see what happened after he heard shouts of Sada Patil “काय पेटले ? काय पेटले ?”. He has also deposed that when he went inside the house of Balu Patil he saw Mahadeo i.e. accused and his mother present there.

30. The prosecution also examined Daji Babu Nikam (PW 6). In his evidence he stated that, house of Dinkar and Vishnu who are his brothers are adjoining to his house. So far actual incident is concerned, he stated that it was the day of Sunday. At about 10 a.m. he had gone to attend manual work in his field known as lendur. Field of Vishnu is situated near his field at a distance of 400 feet. Vishnu was also doing his manual work in his field. At about 2.30

p.m. Ankur, Sandip and Suresh came to call him in his field. Sandip told him that, Mahadeo had burnt Kamal in the house of Balu. Balu is son of Tukaram Patil. He himself and Vishnu came in the house of Balu. The front portion of house of Balu was found locked, they entered in the said house from rear side door. They straight way reached by crossing parada in kitchen of that house. Kamal was sitting by taking support of the wall with knees near her. Accused Mahadeo was standing at some distance with tin of kerosene. Vishnu asked Kamal as to what happened. She told that, she was proceeding towards the house of Balabai Savekar. She also told that, accused obstructed her and by pressing her mouth dragged towards that house. Then he further narrated what was stated by the said Kamal. Then he himself and Vishnu had gone to the police patil to ascertain whether he is present or not. Police Patil was not their as he had gone to his field. Then he came back to his house.

31. During his cross examination he stated that, people gathered there at the distance of 20 feet from his house. He did not ask those persons as to what happened. For about 20 persons were present in the mob. All those persons are from his lane where his house is situated. He stated that nobody amongst mob told them about the incident nor they inquired them about the same. Ankush and Suresh told that the house from front is locked. Some ladies, accused and his mother were present in the room where the incident

had occurred. However, nobody was present in the parada of the house. He raised shouts after seeing Kamal. Nobody came near him. He has not stated before the police about standing of accused with tin of kerosene in his hand and also presence of his mother and other ladies in the room. He stated before the police that, the accused by pressing mouth of Kamal dragged her towards the room of Balu Patil. However, he cannot state as to why this is not appearing in his statement.

32. If the evidence of Vishnu (PW 5) and this witness Daji Nikam (PW 6) is compared and considered, Vishnu in his evidence stated that, when they entered in the house of Balu Patil from back side they saw Kamal burning. The accused was present and upon seeing them he ran away. However Daji Nikam (PW 6) stated that, when they went inside the room that time accused Mahadeo was standing at some distance with tin of kerosene in hands. There is apparent contradictions about presence of accused and whether at the relevant time he was holding kerosene tin in his hand. It is also stated by the Daji Nikam (PW 6) that there was mob of 20 persons who are residing in his lane. Though he stated before the police that accused by pressing mouth of Kamal dragged her towards that room, said version is not appearing in the statement recorded by the Police.

33. The prosecution has examined Keraba Ganpati Patil (PW 7). It

appears that he is maternal grandfather of Kamal. He was in his house at about 3.00 pm. When he heard that daughter of Malubai is injured because of burns and is in injured condition in the house of Tukaram Sada Patil; he had gone to that house and made attempt to enter in the house. He crossed first two japtas of that house and then entered in third japta. It is kitchen of that house. Kamal was found sitting near the wall touching it. She was found sitting by folding her knees near hear. Her clothes of terricot were found stuck up to her body. She was in burnt condition. Then he asked Kamal how this incident occurred. Then Kamal narrated the incident then he left the spot so as to search the vehicle to carry patient to the hospital for medical treatment then he brought one jeep then they went to the hospital.

It appears from his deposition that, he entered in the house of Mahadeo who is son of Tukaram Patil from the front side of the house therefore, the claim of other witnesses i.e. PW 3, 5 and 6 that house of Mahadeo was closed from front side does not appear to be in tune with contention of Keraba Ganpati Patil (PW 7).

In his cross-examination Keraba Patil (PW 7) stated that, he heard entire statement recorded by the police. Kamal put thumb impression on it and he attested the same. He has also stated that, other persons were standing nearby the house of Tukaram Patil.

34. All these witnesses i.e. PW 3, 5, 6 and 7 are relatives of patient. Their version appears to be contradictory in as much as Vishnu stated that, when they entered inside the house of Mahdeo from back side at that time accused Mahadeo was standing and on seeing them he ran away. Vishnu did not state that, mother of the Mahadeo was present so also ladies were present. Ankush Daji Nikam (PW 3) has stated his evidence that, mother of Mahadeo was also present when he entered in the house of Balu Patil. Keraba Patil (PW 7) stated that, he entered in the said house from front side. However, other witnesses have stated that, house of Balu Patil was closed from front side. It is important to note that, though Ankush Daji Nikam (PW 3) stated in his evidence that, at the relevant time when he heard shouts of Sada Patil, there were number of boys playing nearby and, 50 students are also residing in the said galli from his school, however, prosecution has not examined an independent witnesses including somebody from these boys playing nearby the house of Tukaram, in support of prosecution case. There is no single witness who saw that, accused Mahadeo obstructed Kamal on road and by pressing her mouth and dragged her towards that house of Balu Tukaram Patil. It is stated by the witnesses that number of persons were gathered and standing in mob nearby in same lane on 20 feet distance, the prosecution did not bother to examine single person from said mob to lend support to

prosecution case. It is also surprising to note that, though these witnesses were present on 31st August, 1997 for recording their statements, but their statements were not recorded on said date as it is evident from their statement that, their statements were recorded on second day i.e., 1st September, 1997. In the first place all the aforesaid witnesses to whom alleged oral dying declarations have been made by Kamal are her close relatives. There is no consistency in their version. The aforesaid four witnesses have not stated that, accused Mahadeo was also admitted in the hospital since he had consumed tranquilizer tablets. As it has come in the evidence of these witness that, the house where an alleged incident had taken place is in crowded area and there are adjoining houses so also number of persons were gathered, the boys were also playing nearby, in spite of availability of large number of independent witnesses, the prosecution did not examine those independent witnesses. It appears from the evidence of prosecution witnesses that, they have tried to suppress real genesis of the incident. The prosecution has not brought on record evidence showing that Kamal was obstructed by accused while crossing the road and by pressing her mouth accused dragged her towards the house of Tukaram Patil. The said evidence would have been vital and an important link to attribute the intention of the accused. However, unfortunately such evidence is not available on record.

35. We have carefully perused the findings recorded by the Trial Court. The Trial Court has observed that, the alleged fact of homicidal death on the part of Kamal remained in the dark. Only interested witnesses i.e. near relatives of the victim are examined by the prosecution and their testimonies are contradictory to each other. There are number of inconsistencies, omissions and exaggerations in their evidence. The written dying declarations are also not trustworthy. Therefore, the Trial Court has given benefit of doubt to the Respondent / Accused.

36. As already discussed, we have independently discussed the evidence of all the prosecution witnesses so also other evidence brought on record by the prosecution, and we are of the view that the view taken by the Trial Court is plausible and the findings recorded are in conformity with the evidence brought on record. It is true that girl studying in 9th standard who was minor aged about 16 years at the relevant time, was victim of the alleged incident. However, in absence of cogent, trustworthy and convincing evidence attributing an intention of Respondent / Accused to commit such an alleged offence, we are not inclined to reverse findings of acquittal recorded by the Trial Court.

37. The Supreme Court in the case of Kali Ram v. State of Himachal

Pradesh³ made following observations:

Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.

38. The Supreme Court in the case of Muralidhar Alias Gidda and Another Versus State of Karnataka⁴, relying upon the earlier exposition of law of the Supreme Court in various pronouncements held that in dealing with appeals against acquittal, the Appellate Court must bear in mind the following :

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is

³ (1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : (1974) 1 SCR 722 : AIR 1973 SC 2773

⁴ (2014) 5 SCC 730

generally loath in disturbing the finding of the fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and reevaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

39. In the light of discussion made herein above, we are of the considered view that no interference is called for in the impugned judgment and order. Hence, Criminal Appeal stands dismissed. Bail bonds of the Respondent / Accused, if any, stands canceled.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)