

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 788 OF 2002

The State of Maharashtra } Appellant
(Orig. Complainant)

VERSUS

Raju Dadu Patharwat, } Respondent
Age : 38, R/o. Shahunagar, (Orig Accused)
Jaysingpur, Dist. Kolhapur

Mr V.B. Konde - Deshmukh, APP for the Appellant – State.
None for the Respondent.

CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.

DATED : NOVEMBER 24, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the Ad-hoc. Additional Sessions Judge, Kolhapur in Sessions Case No. 78/2000, dated 03rd January, 2002, whereby respondent herein (Original Accused) was acquitted of the charges for committing offences punishable under Sections 302 of the India Penal Code (for short “IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. The case of the prosecution can be summarized as follows:-

Victim deceased (Shanta) was married to one Vasant Jadhav. The couple was blessed with two children namely, Ramesh and Umesh. After matrimonial span of 8 to 10 years, Shanta's husband Vasant deserted her and he was residing in his village whereas Shanta was staying with her children in an area known as Ramnagar for sometime. After sometime Umesh and Ramesh separated from their mother Shanta and started residing at a place named as Shahunagar which is the place of grandmother. Shahunagar is part of town Jaysingpur. It is the further case of prosecution that Shanta developed illicit intimacy with accused Raju Patharwat. This illicit intimacy continued for 5-6 years before the death of Shanta. Accused Raju was ill-treating Shanta on account of demand for liquor and was also suspecting that Shanta was in relation with some other person. In short Raju had a grudge against Shanta on account of that she was not loyal to him. There was heated exchange of words between the accused and Shanta. It is further the case of prosecution that some neighbours heard exchanges followed by screams of Shanta and soon after that Shanta came out of the house in burned condition. She ran towards the neighbouring house of Nagava. A barrel of water was kept in front of Nagava's house. Shanta reached to that barrel and started

pouring water on her person. The neighbours namely, Nagava, Kulsumbi and others rushed towards Shanta. Nagava came out of her house with a saree as Shanta was completely burned. Nagava put saree over the person of Shanta and made inquiry with her as to what happened to which Shanta told that accused poured kerosene on her and set her ablaze. It is further the case of prosecution that this exchange of words between Shanta and Nagava was overheard by Vidya Kamble and Kulsumbi. Accused Raju then going by small lane (called as 'bole') was seen by one Dipak Nalawade. An information was then forwarded to Shanta's sons Umesh and Ramesh. Ramesh immediately rushed to the spot along with his maternal aunt. An auto rickshaw was arranged for shifting Shanta to the hospital. While she was being shifted to the hospital she told Ramesh that accused who had consumed liquor came to her house, picked up quarrel with her on demand of money and her relationship with other persons, then poured kerosene on her and set her ablaze.

3. Shanta was thereafter taken to the Civil Hospital, Sangli and admitted. At the time of admission of Shanta, Dr. Gore was the duty medical officer. One Shinde head constable who was on duty at the chowki of Civil Hospital recorded the dying declaration of Shanta. The

same was forwarded to Vishrambag Police Station. On receipt of the information, the station officer registered an offence under section 307 of IPC and forwarded the complaint to Jaysingpur police station as the spot where the incident took place is within the jurisdiction of Jaysingpur police station. On registration of the offence, on the basis of dying declaration recorded by the duty constable, API Shinde took over the investigation. On 02.03.2000 victim Shanta succumbed to the burn injuries, accordingly the offence was then converted into an offence under Section 302 of IPC. Police Inspector Gore took other necessary steps in the process of investigation such as, recording the statement of witnesses, drawing the panchanamas, seizure of articles from the spot, forwarding the articles to the forensic laboratory, receiving the CA reports etc.

4. On completion of the investigation charge-sheet was filed in the Court of learned JMFC. As the offence being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The accused denied the charges leveled against him and his defence was of false implication. Learned Trial Judge on hearing the learned Counsel appearing for the respective parties framed the points for consideration.

Learned Trial Judge recorded his finding in affirmative in so far as the point namely, where the prosecution proved the death of Shanta being homicidal one but recorded a negative finding in so far as the authorship of the crime is concerned.

5. Learned APP vehemently submitted before this Court that there is a strong evidence brought by the prosecution in the form of oral and written dying declarations. The version of independent witnesses is trustworthy. It is also the submission of learned APP that the written dying declaration was recorded immediately on admission of victim in hospital. Learned APP then submitted that in spite of clinching evidence learned Trial Court gave an undue weightage to certain minor discrepancies / inconsistencies in the version of witnesses and recorded the judgment and order of acquittal. Thus, it is the submission of learned APP that Trial Court failed to appreciate the evidence in proper perspective and prayed for allowing the appeal.

6. None appeared for the Respondent – Original Accused.

7. With the assistance of learned APP, we have gone through the record.

8. The prosecution examined as many as 16 witnesses and placed on record certain documentary evidence. On going through the evidence and record placed before us, we are of the opinion that learned Trial Court scrutinized and assessed the evidence in proper perspective. Learned Trial Judge committed no error in arriving at the ultimate conclusion of acquittal and had assigned cogent and justifiable reasons for not accepting the evidence brought by the prosecution.

9. It may not be out of place to state that the case of prosecution against the accused is based on suspicion and it is settled principle of law reflected in various judgments of this Court as well as the Hon'ble Apex Court that suspicion, however, strong it cannot take place of proof. The prosecution must establish its case against the accused beyond reasonable doubt. Keeping this principle in mind, now we may refer to the evidence brought before the Court below.

10. We may first refer to the evidence of Sou. Nagava Maruti Gadiwaddar (PW 2). As per the case of prosecution victim came out of her house in burned condition and rushed to the house of this witness and made a dying declaration as such version of this witness assumes

importance. Nagava (PW 2) in her examination-in-chief stated that deceased Shanta had deserted her husband for about 4-5 years before her death. Accused Raju was staying with deceased Shanta at her place. She further stated that she does not know about the relations between them. They were living happily. She further stated that on that day in the evening She was going with her daughter to the doctor. Her another daughter Renuka came near her and said that victim Shanta was lying having received burns in front of her house. She further stated that she then went towards that place. She saw Shanta was sitting near her house near water tank and she had poured water on her person. She further stated that she had received burns on front portion of her body. She then told her when she asked her what had happened to which Shanta replied that Raju Kalgutki did so. Shanta told her that accused poured kerosene and set fire to her. She further stated that Shanta told this much only and did not tell her anything else. She further stated that at that time Vidya Kamble, a Muslim woman, and many others from the locality had gathered there. At that time Shanta's son Umesh came there and went to bring rickshaw to take her to the hospital. Then Shanta's another son Ramesh, Shanta's sister Gourabi came there. They took Shanta by

rickshaw to hospital.

Now it is interesting to note the version of this witness in her cross-examination. Nagava in cross-examination stated that Shanta was groaning. Perusal of vernacular evidence of this witness show that it is stated by this witness that Shanta was groaning (Shanta 'Kanhath' hoti). She further admits that it is true that due to burn injuries as she was groaning she was not in a position to talk. She further states that Shanta was lifted and placed in a rickshaw. She had slightly lost her conscious when she was placed in a rickshaw. Then an omission is brought on record and it reads thus: "I had stated before police that Shanta told me that Raju Kalgutaki poured kerosene on her person and set fire to her". I cannot say as to why police have not recorded accordingly. Then omissions are brought on record that I might have not stated before police that the witnesses Vidya Kamble, Akkatai Kurade, one Muslim lady were present there. I had not stated before the police that her son asked Shanta about her burns. She further stated in the cross-examination that she simply knows that accused is known as Raju.

11. Perusal of the testimony of witness Nagava clearly shows that when Nagava reached near victim, victim was groaning and slightly lost

her conscious and was not in a position to talk. Nagava stated in her examination-in-chief that she knows accused as Raju Kalgutaki and it was brought on record by way of an omission that victim told the witness that Raju Kalgutaki poured kerosene on her person. Now the accused before the court is Raju Patharwat and this fact assumes importance on the backdrop of an admission by Nagava (PW 2) in her cross-examination that she does not know accused closely. This is a major discrepancy in the version of this witness. At one hand this witness states that deceased Shanta was residing with accused Raju for a span of nearly 5 to 6 years before her death. This witness also stated that both of them were residing happily and then in the cross-examination states that she does not know accused closely.

Learned Trial Court while considering this aspect in paragraph 11 of the judgment rightly arrives at a conclusion that the infirmities in the evidence of Nagava (PW 2) make her evidence unsafe to believe and similar is the case of Vidya Mohan Kamble (PW 3).

12. Vidya Mohan Kamble (PW 3) in her examination-in-chief stated that she is also the resident of same locality and neighbour of victim Shanta. She further stated that Shanta's husband was staying with her for

about 2 years. Thereafter, his husband deserted her and went away. Thereafter, accused Raju Kalgutaki used to come and stay at Shanta's place. She further stated that accused had no other name. She does not know if accused had any other surname. She does not know whether accused permanently used to stay. Accused used to visit Shanta for 7-8 years prior to her death. Often they used to quarrel. She further stated that she does not know why as she was not understanding the language which they used to talk. Then she stated that on the day of offence at about 6 of 6.30 pm I was cooking food in my house. At that time, I heard quarrel between accused and Shanta and after sometime I heard the voice Vachava-Vachava (Save Save). I then came out and peeped. Then she stated that she saw Shanta running away from her house having caught fire towards the house of Nagava. After going near Nagava's house she poured and sprinkled water on her body, where she had received burns and fell down. Then she stated that Nagava placed saree on the person of Shanta as her saree was burnt. When Nagava asked Shanta what happened, Shanta told that Raju Kalgutaki poured kerosene and set her on fire.

It is interesting to note here that though it is the case of

prosecution that this witness is a witness on account of oral dying declaration, as referred to above this witness states that she came out of the house and peeped from there though at the time of alleged disclosure to Nagava and other persons, Vidya (PW 3) was not the persons before whom Shanta made oral disclosure.

Then in the cross-examination the factum of quarrel between the deceased and accused before victim was set ablaze is brought on record by way of an omission. Then the cross-examination clearly shows that this witness reached near the victim when the victim was being taken to the hospital and at that time Shanta was groaning and was not in a position to talk. It may be useful for our purposes to refer version of the witness in the cross-examination and it reads thus: "When I went there at that time Shanta was being taken by the rickshaw, by her sons and sister. At that time due to burn injuries Shanta was groaning. At that time it is true that she was not able to talk but she was crying and shouting. It is true that Shanta did not state anything to Nagava". Thus, this witness reaffirms our opinion that the evidence of Nagava (PW 2) is not reliable and trustworthy.

13. Another witness is Kulsambi Firoz Mujawar (PW 4) who is

also a neighbour. Now interestingly Kulsambi on hearing some noise rushed to the house of Nagava. She found that Nagava was putting saree on the person of Shanta. Shanta had received burns and she was groaning. Kulsambi in her deposition before the Court in examination-in-chief itself states that when Nagava asked Shanta as to who set her on fire and how she received burns to which Shanta told that she herself poured kerosene on her person. Then the question was repeated and then Kulsambi stated that Shanta told Raju poured kerosene and set her on fire. Interestingly again the version of this witness that Nagava went near Shanta and asked as to how she was subjected to fire and received burn injuries was brought on record by way of an omission. Raju was suspecting Shanta and was not giving her money is the another omission brought on record.

Thus, these three witnesses i.e. Nagava (PW 2), Vidya (PW 3) and Kulsambi (PW 4) though claimed as the independent witness and the prosecution further claimed that as there was an immediate disclosure which can be treated as an oral dying declaration, the same cannot be accepted considering the material inconsistencies in the version of these witnesses. It is certainly unsafe to place an implicit

reliance on version of these so called witnesses on the aspect of the oral dying declaration. The oral dying declaration as such lost its credibility on an appreciation of the evidence in so far as these witnesses are concerned.

14. Anil Powar (PW 5) is the panch witness in whose presence articles namely, a container having small quantity of kerosene, a matchstick and some partially burned matchstick and partially burned saree, were seized. In the cross-examination, Anil (PW 5) states that he was called upon to act panch by Umesh. He also admits in cross-examination that Umesh is from his community. Thus, this witness is not furthering the case of prosecution, on the contrary, in view of the admission in cross-examination that he was called upon by Umesh to act as panch witness, it is difficult to accept the version of this witness as an independent witness.

15. Ramesh Jadhav (PW 6) is another important witness. We may refer to the evidence of Ramesh (PW 6) and Umesh (PW 8) being the son's of deceased Shanta. Ramesh (PW 6) states before the Court that accused had illicit connection with his mother for about 4-5 years prior

to her death. He further stated that on the day of incident at about 7.00 pm he returned home from his work. His brother Umesh was in the house and at that time one Dipak and Sandeep Kurade came to his grandmother's house. Dipak told him that his mother was subjected to burn and he should go there. On receiving this information, Umesh told Ramesh that he (Ramesh) shall stay at home and he himself (Umesh) would go and see what happened. Ramesh further stated that then he went to his aunty's (mother sister) place and told her about the incident. Then along with his aunt he reached Ramnagar. He further stated that on the way he met his mother and Nagava. He saw his mother had sustained burn injuries. Then he and his aunt took his mother to Civil Hospital, Sangli by arranging auto rickshaw. Then she told Ramesh that accused Raju came to her house by consuming liquor and raised grievance that she was not giving him money and was having illicit relation with some other person and poured kerosene on her person and set her on fire. Then his mother was admitted in the Civil Hospital, Sangli and in the early hours of 02.03.2000 she died.

In his cross-examination Ramesh stated that he met his mother and Nagava at a distance of 150 ft. from his mother's house at

that time Umesh was not with them. Then he stated that his mother came walking up to the place where rickshaw was in Shahunagar. Then he stated that there is a police chowki in Civil Hospital, Sangli and he made a complaint about the burning of his mother in the police chowki. Police recorded his complaint and below his recorded statement police took his signature. Then he stated that his mother was sick and was taking treatment in TB hospital at Jaysingpur. Now though, this witness Ramesh stated in the cross-examination that he made a complaint in the police chowki about burning of his mother and his statement was recorded by the police, the investigating officer denied of any complaint and statement recorded of this witness. Thus, it can be seen that the investigating agency had not brought the entire material before the Court and there is a reason to believe that certain material was suppressed by the investigating officer.

16. Umesh Jadhav (PW 8) is another son of deceased Shanta and brother of Ramesh (PW 6). He stated about receiving an information (about Shanta was subjected to burn) through one Sandeep Kurade and Dipak Nalawade. He further stated that he then rushed to his mother's house and saw his mother was sitting near the house of Nagava and

received the burns on her body. He further stated that on asking to his mother as to what happened she stated him that accused Raju had came to her house and was demanding money and was alleging that his mother had illicit connection with other persons and on her denial to give money Raju poured kerosene on her person and set her on fire. Then he stated that he went to fetch auto rickshaw and when he was bringing rickshaw, Ramesh and his aunt had taken his mother by another rickshaw to Civil Hospital, Sangli. He further stated that his mother was having good health and she was not ailing and she used to work as labourer under mason and till her death.

At this stage, it may be useful to state here only that Ramesh (PW 6) stated before the Court that his mother was not keeping good health and was taking treatment in the TB hospital whereas Umesh (PW 8) states that his mother was keeping good health and was not ailing.

Now coming to the cross-examination of Umesh (PW 8). It reveals that his version victim Shanta (his mother) was lying near the house of Nagava when he rushed there is coming on record by way of an omission. He admits in the cross-examination that his mother was groaning due to burn injuries. Then he admits in the cross-examination

that he made no attempts to lodge complaint at the police chowki in Civil Hospital, Sangli. There are material discrepancies in the version of these two witnesses, namely, Ramesh (PW 6) and Umesh (PW 8) who are the real brothers and as claimed by the prosecution immediately rushed to the place of incident.

17. Dr. Madhav Gore (PW 7) is the autopsy surgeon. He stated that the dead body was brought by the constable of Vishrambag Police Station. He started conducting the examination at about 4.00 pm and completed it at about 5.00 pm. He stated that the deceased had received the burns to the extent of 66%. The burns were superficial to the deep which he described as mixed burns bubbles which were formed due to burns had ruptured. Then he stated that the extent of burns to various parts of the body. The defence declined to cross-examine this witness. This witness supports the case of prosecution in respect of homicidal death of Shanta.

18. The next important witness is Maruti Shinde (PW 9), who is the police head constable attached to Vishrambag Police Station. At the relevant time he was a duty constable at Civil Hospital, Sangli. He stated

in his deposition that at 01st March, 2000 he was on duty at Civil Hospital, Sangli and received an information from Shri Mulla, PSO, Vishrambag Police Station and it was informed to him that to record dying declaration of burn patient i.e. Smt. Shanta Jadhav. Then he proceeded to burn ward, Dr. Deole present their. He requested Dr. Deole to record statement of Shanta by examining her and verifying whether she is in a position to make statement. Accordingly, Dr. Deole examined the patient and permitted Shinde (PW 9) to record the statement. The certification of Dr. Deole appears on the top of the statement. Then he put certain queries to patient Shanta so as to satisfy himself about her mental fit condition to make statement. Then as per the version of victim he recorded the statement. Then he read over the recorded statement to the victim and on ascertaining from the victim that it is correctly recorded he obtained thumb impression of her left hand below the dying declaration. Then he attested the thumb impression. Then again he sought certification from Dr. Deole and made his endorsement on the said statement which is treated as dying declaration Exhibit 31. Then it is stated by Shinde (PW 9) that he personally went to the police station and handed over the recorded dying declaration along with his report on the

reverse side of the declaration. On receipt of the statement / declaration Mr. Mulla forwarded the same to Jaysingpur police Station with his endorsement.

In his cross-examination he stated that at the time of recording the dying declaration treatment to Shanta was not started. Then he admits in the cross-examination that though there is a list of names of the Executive Magistrate displayed in the office of Civil Surgeon, Sangli he did not made any attempt to call the executive magistrate so as to record the dying declaration. Then to a query by the Court as to why the witness did not secure the executive magistrate to record the dying declaration he replied that there was an order of the District Magistrate, Sangli that the police shall record the dying declaration as such he did not secure the presence of Magistrate. Then he admitted in the cross-examination that he had not noted the time of commencement and conclusion of the dying declaration. He further admitted that he failed to record in the dying declaration that the doctor was present throughout recording of the dying declaration. Then he stated in the cross-examination that Shanta told him in the beginning that her husband's name is Raju. She also told him her address as

Shahunagar. He then admits that she also told him that she and her husband used to go to work as labour. She further told that she is not aware of the surname and fathers name of Raju. Then he admits that there were two thumb impressions on the dying declaration. Then he stated that as the first thumb impression was not clear he took the second thumb impression on the first thumb impression. Then he admits that there is scoring in the dying declaration and initially the word written was 'Aaj' today, subsequently the same was rewritten 'Kal' yesterday. Then he admits that he failed to mark his initials against the over writing. Then he admits that he met Shanta's son in the Hospital and denies that Ramesh made any statement before him.

19. Perusal of postmortem report show that the palm of the victim was subjected to the burn injures whereas this witness stated before the Court that he obtained thumb impression of Shanta. He had admitted before the Court that there were two thumb impressions in the dying declaration. First thumb impression was vertical and second was horizontal. Then this witness though admits he met Ramesh in the Hospital but then he denies about any statement made by Ramesh before him.

At the cost of repetition, we may state here that Ramesh (PW 6) specifically stated before the Court that he made a complaint to the police chowki at Civil Hospital, Sangli and his statement was recorded. Now Shinde (PW 9) stated that deceased Shanta stated before him that she was residing with her husband Raju Jadhav whereas the name of her husband was Vasant Jadhav.

20. Perusal of dying declaration further show that Dr. Devkar who had certified the condition of victim at the top of the statement as well on the bottom of the statement stated that patient is in a condition to give valid statement. Now we may refer to the evidence of Dr. Devkar in the later part of this judgment. In so far as Shinde (PW 9) is concerned, there is no plausible explanation as to why Shinde obtained two thumb impression i.e. one horizontal and another vertical. There is also no explanation coming forth as to how the thumb impression of victim was obtained when she had received 66% of burns including her palms. Thus, evidence of this witness is also not free from doubts and it is unsafe to place reliance on the version of this witness and resultantly it is also unsafe to place any implicit reliance on the so called dying declaration recorded by this witness.

21. Govind Shinde (PW 10) who was attached to Jaysingpur police station as head constable on 02.03.2000. He was police station officer and on receipt of the dying declaration of Shanta from Vishrambag police station he registered the offence on the basis of dying declaration. He made corresponding entry to that effect in the station diary.

22. Dr. Pralhad Devkar (PW 11) is the another important witness. He was attached to Civil Hospital, Sangli at the relevant time and was on duty in burn ward. Dr. Devkar deposed before the Court that on the relevant date at 10.45 pm when Shanta Jadhav was admitted in burn ward she had suffered 66% burns. He started providing treatment to her. One police head constable reached there at that time on a query to PW 11 whether he can take statement of the injured. PW 11 then examined the patient and on finding that she was conscious and oriented he made an endorsement on the statement. He stated that by orientation he means individually conscious to the surrounding and timing. Then he stated that he was present near the injured throughout her statement and on conclusion of the statement he again examined the patient and made

an endorsement about the consciousness of the patient in the statement. The date and timing was noted by him. He further stated that on 2nd of March, 2000 patient expired.

In the cross-examination Dr. Devkar stated that at the time of admission of patient at about 10.45 pm he recorded history relating to the injuries and the history as per the information provided by the patient herself. He further stated in cross-examination that the patient told him while recording the history that her husband poured kerosene on her person and set her on fire at 8.30 pm. Dr. Devkar then admitted in the cross-examination that both hands of the patient were burned and when he was referring hands it mean both dorsum as well as palm portion of the hand. Now two very important aspects emerged from the cross-examination of this witness is, firstly, while giving history the patient i.e. deceased Shanta told this witness that her husband poured kerosene on her person and set her on fire and secondly, her both hands were burned meaning thereby injuries were to the extent of both dorsum and palms. As the patient gave history to Dr. Devkar that she was set on fire by her husband and also while admission of patient her name was recorded as Shanta Vasant Jadhav. In the evidence of the witnesses and

more particularly, Ramesh (PW 6) and Umesh (PW 8) i.e. sons of deceased Shanta specifically stated before the Court that Shanta was deserted by her husband i.e. by their father since 4-5 years prior to the incident. Shanta was residing separately. Thus, while providing history to Dr. Devkar and further in the statement the version of maker of the statement that her husband set her on fire creates doubts about the mental fitness of the patient. On one hand the prosecution is coming before the Court with a case that it was accused Raju who poured kerosene on the person of victim Shanta and set her on fire and on the other hand, the alleged dying declaration recorded by the police head constable Shinde in presence of Dr. Devkar refers that victim stated in the statement that her husband set her on fire. The another reason making the said dying declaration doubtful one is two thumb impressions obtained by police head constable Shinde in the statement i.e. one vertical and other horizontal. Dr. Devkar (PW 11) deposed before the Court that both the palms of the patient were burned. In view of these facts, the learned Trial Judge was justified in not accepting the said dying declaration as reliable and trustworthy one. The detailed observations of the Learned Trial Judge are reflected in paragraphs 22

and 23 of the judgment.

23. Next witness is Dipak Nalawade (PW 12) who is the neighbour of Shanta. He stated before the Court in his examination-in-chief that there was an illicit connections between the accused and Shanta. They used to quarrel oftenly. Then he stated that on the day of incident at about 06.30 pm he was in his house and on hearing cries he came out of the house and found that some persons had gathered near house of Shanta. Shanta was running towards house of Nagava. Shanta rushed to the where water barrel was kept. Then he saw accused running from small lane ('bole'). As the saree of Shanta was subjected to fire, Nagava placed a saree over the person of Shanta. Then he stated that he along with one Sandeep went to the place where sons of Shanta were residing and informed them about the incident. Umesh accompanied them and reached to the spot. Umesh then made inquiry with his mother as to how the incident took place and she told that Raju came to her house, he was suspecting her character and he poured kerosene on her person and set her on fire. Then Umesh went to arrange for a rickshaw by that time another son Ramesh reached the sport along with sister of Shanta. Both of them took Shanta in rickshaw.

In the cross-examination this witness stated that when he reached on the spot he saw Shanta laying near the barrel of water and was groaning due to burn injuries. He stated that he had no talk with Shanta nor he asked Shanta as to how she received burns. This witness saw the accused running in the small lane i.e. bole is brought on record by way of an omission. In the next breath this witness states that the accused ran behind the house of Shanta. In the cross-examination this witness further stated that at about 08.30 pm he went to Jaysingpur police station along with Sandeep and informed the police about the incident that Shanta received burns. He further stated that he did not tell the police how Shanta received burns. Then he stated in the cross-examination that police recorded his information and obtained his signature.

It would be useful to state here that this witness in cross-examination stated that he had disclosed information of Shanta receiving burns to the police station authorities of Jaysingpur and his statement was recorded by the police authorities. The evidence of the police officials show that on recording the dying declaration the head constable Shinde forwarded the same to the Jaysingpur police station and on receipt of the dying declaration the FIR was registered. Thus, again there

is a reason to believe that the entire material was not brought before the Court below.

24. Munir Mulla (PW 13) is the police head constable who was attached to Vishrambag police station at the relevant time. On receipt of an information from Dr. Shitole, CMO of Civil Hospital, Sangli that a woman who had received burns at the hands of her husband had been admitted and in turn the information was passed on to PSO of Jaysingpur Police station. Then Munir Mulla (PW 13) received the dying declaration of Shanta. Then registering of crime at zero number on 02.03.2000. He forwarded the case paper to Jaysingpur police station.

25. Dr. Avinash Shitole (PW 14) who was attached to Civil Hospital, Sangli as the medical officer on 01.03.200. At about 10.45 patient Shanta was brought to the hospital by her son in burn condition and on inquiry he found the patient was having 66% burns. On a query to the patient the patient told him that her husband poured kerosene on her and set her on fire. Accordingly, he noted the history in case papers. He also made entry in the register being a medico legal case. He had also drawn diagram showing the parts of body affected by burn injuries. He stated that further treatment was provided to the patient in burn wards

by doctor in-charge of the burn ward.

26. Dilip Gore (PW 15) is the API attached to Jaysingpur police station, who took over the investigation from police head Shinde. He stated about the steps taken by him in the process of investigation such as recording the statement of witness, effecting arrest of the accused etc.

In the cross-examination, PI Gore admitted that he had not drawn arrest panchanama of accused. The omissions are brought on record through this witness PI Shri Gore.

27. Sanjay Tate (PW 16) was attached to Jaysingpur police station at the relevant time. He took over the investigation on 09.03.2000 and only part played by this witness in the investigation is of forwarding articles with letter to forensic laboratory for CA and receiving CA report and then filing of charge-sheet on 15.05.2000.

28. Last and important witness is, Dr. Sachin Patil (PW 1). As the prosecution claims that accused was present at scene of offence, and has received burn injuries, on this aspect testimony of this witness assumes importance. Dr. Sachin Patil (PW 1) deposed before the Court that he was working as medical officer at Primary Health Centre,

Jaysingpur. On 02.03.2000 police brought accused Raju Patharwat for medical examination and treatment regarding his injuries. On examination he found following injuries.

1. Over shape blisters of size 7 cm. X 5 cm on dorsum of right hand.
2. Over shape blisters 3 x 2 cm on left thumb.
3. Blisters of size 3 x 2 cm on dorsum of right foot.
4. Multiple blisters large one measuring 1 cm x 1 cm and small .02 x 0.1 cm on dorsum of right foot.
5. Blisters 5 cm x 5 cm on dorsum of left foot.
6. Blister 5 cm x 4 cm on dorsum of left foot.
7. Blister 7 x 4 cm left shin.

He opined, all these injuries were simple and they were within 24 hours. He further stated that these injuries are possible if a person attempts to extinguish the burning saree. He further stated that these injuries are also possible from close contact of burning person.

In the cross-examination, he admitted that blisters can be formed if boiling water falls on the body. He further admitted in cross-examination that these injuries are possible by falling of boiling water. If

boiling water is sprinkled such type of blisters can be possible.

29. The circumstance relied on by the prosecution against the accused that burn injuries caused to the accused is concerned, to which the accused had provided an explanation in his statement under Section 313 of the Cr.P.C that due to fall of hot water the burn injuries were caused to him.

30. As stated above, Dr. Sachin Patil (PW 1) deposed before the Court that he examined accused on the very next day of the offence and found 7 blisters on foot, left thumb and shin. Dr. Sachin (PW 1) in his cross-examination clearly admits that blisters can be caused by fall of boiling water or sprinkling of boiling water. Thus, considering the explanation provided by the accused, this circumstance also cannot be used against the accused to hold him guilty.

31. As stated above, on a close scrutiny of the evidence, we are of the opinion that there are material discrepancies in the version of witness who claimed as independent witness on rushing to the spot immediately and witnesses on the point of oral dying declaration. These discrepancies are of such serious nature they go to the root of the matter and these

material discrepancies, the version of these witnesses cannot be accepted as truthful and reliable resultantly, no reliance can be placed on these witnesses. Material inconsistencies is on the aspect of the authorship of the crime, the version of some witnesses goes to show that Shanta made a disclosure to the effect that her husband was the author of crime, to some witnesses the disclosure is one Raju Kalgutaki is the author of the crime but the name of accused is Raju Patharwat. The witnesses are also not consistent on the aspect whether Raju Kalgutaki is the same person known as Raju Patharwat. Thus, there are serious infirmities in the dying declaration recorded by the police head constable Shinde.

32. Learned Trial Judge committed no error in appreciating these evidence and the view adopted by the learned Trial Judge on appreciation of evidence was a possible view. We are unable to find either any illegality or any perversity in the judgment of the trial Court. The conclusion arrived at by the Trial Court are based on sound reasoning. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)