

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1081 OF 2015

Bhaurao Ramnath Gulve)
Age 25 years, Occu. - Nil,)
R/o. - Ramoshiwadi,)
Tal. Sinner, Dist. Nashik)
(Presently detained at Nashik Road)
Central Prison, Nashik) ...Appellant
(Orig. Accused No. 1)

VERSUS

The State of Maharashtra) ...Respondent
(Orig Complainant)

Mr. Vikas Shivarkar for the Appellant.
Mr. A R Patil, APP for the Respondent – State.

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

DATE : SEPTEMBER 03, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge – 6, Nashik, dated 01st September, 2015 in Sessions Case No. 322 of 2013, whereby the Appellant – Orig. Accused No. 1 was awarded conviction and sentence for commission

offence under Section 302 of Indian Penal Code (for short “**IPC**”) to suffer imprisonment for life and conviction and sentence under Section 498-A of IPC to suffer rigorous imprisonment for the period of two years and to pay fine of Rs. 1,000/- in default, to suffer further rigorous imprisonment for one week.

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

The marriage between Appellant and Maya (deceased) was solemnized two months prior to 13.07.2013. The appellant was insisting for divorce and was ill-treating deceased. Deceased was willing to continue the matrimonial relationship as such, was refusing the offer of divorce. Parental home of deceased is in the same vicinity of her matrimonial home and deceased was visiting to her parental home frequently. On the fateful day, i.e., 12.07.2013, deceased returned to matrimonial home from her parental home at about 11.00 am. Deceased had conducted the day to day domestic affairs. Appellant – accused who had been to his work place returned home in the evening. Deceased prepared the food for family. The family took dinner and went for sleep. Deceased was sleeping inside the house along with her in-laws and

accused was sleeping in varanda.

3. In the intervening night of 12.07.2013 and 13.07.2013 at about 11.00 – 11.30 pm deceased went outside the house for easing out (for urination) meanwhile, accused had dragged her in varanda and asked her as to why she came for cohabitation and further asked her as to why she is not giving divorce to which deceased replied that she is willing to cohabit with accused and she will not give divorce to him. Accused was annoyed by the reply of deceased and he gagged her mouth and tied her hands with clothes and poured kerosene on her person and set her on fire by igniting matchstick by laying on ground. In that process saree of deceased caught fire and deceased came outside the house and ran towards the house of her sister, namely, Chhaya (PW 3) located near the residence of deceased. Chhaya, her husband Ganesh and her mother-in-law Kondyabai extinguished the fire by throwing clothes upon her. An information was forwarded to some of the relatives and police. On receiving the information police station officer of Wavi Police Station deputed police head constable Ramdas Sanap (PW 11) to record the statement of deceased. Ramdas Sanap (PW 11) immediately rushed to the civil hospital. Ramdas Sanap (PW 11) contacted the medical officer

and on seeking assurance from medical officer that deceased is in fit state of mind to give statement, Ramdas Sanap (PW 11) recorded the statement of deceased.

4. On the basis of the said statement Wavi Police Station registered the crime bearing no. 101/2013 for the offences punishable under Sections 498-A and 307 read with Section 34 of the IPC against the Appellant – Orig. Accused No. 1 and mother-in-law of deceased i.e. Sitabai Ramdas Gulve – Orig. Accused No.2.

5. Mr. Devendra Patil (PW 12) had taken over the investigation on registration of crime and took the necessary steps in the process of investigation, namely, visiting the spot of the incident, preparing the spot panchanama in the presence of panchas, seizure of the articles collected from the spot, such as, plastic can containing oil, matchstick, partially burnt scarf, rope etc. Appellant – Accused No. 1 was arrested. The apparels of the accused were seized under seizure panchanama. Then Accused No. 2 was arrested.

Supplementary statement of deceased was recorded by obtaining an endorsement of medical officer about the condition of

patient. Then the investigating officer recorded the statements of deceased, parents of deceased, brother, namely, Sachin (PW 1), Dashrath (PW 2), sister Chhaya (PW 3) and Janabai (PW 4). Investigating officer who had seized the articles, forwarded the articles to CA laboratory along with his letter through carrier i.e. Police Naik Donde, B.No. 2194. Investigating officer then sought for CA report. Meantime, deceased who was under medical treatment expired on 16.07.2013. Accordingly, report was submitted to JMFC, Sinner for addition of the offence punishable under Section 302 of IPC and on completion of necessary formalities of the investigation, charge-sheet was filed against the accused persons in the Court of JMFC. As the offence against these accused persons is punishable under Section 302 of IPC and being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions for trial. Charges were framed against the accused persons. Accused pleaded not guilty and claimed trial. Defence of the accused was of total denial. Accused were subjected to the statement under Section 313 of the Code of Criminal Procedure by exposing the incriminating material against them. The defence of the accused person was of two folds, firstly, a false case is registered against them at the instance of the resident of the

locality who were having grudge against the accused persons and wanted them to remove from area and other defence was in the nature of an accidental death.

6. In support of its case, the prosecution has examined, as many as, 12 witnesses which are as follows: Sachin Dashrath Jedgule (PW 1), Dashrath Yeshwant Jedgule (PW 2), Chhaya Ganesh Gulve (PW 3), Janabai Dashrath Jedgule (PW 4), Santosh Ramchandra Donde (PW 5), Dr. Siddharth Shelke (PW 6), Dr. Rajendra Dusane (PW 7), Dr. Asawari Bacchav (PW 8), Prakash Mahajan (PW 9), Dr. Satish Chandurkar (PW 10), Ramdas Savliram Sanap (PW 11), and Devendra Patil (PW 12).

7. The Additional Sessions Judge, Nashik on appreciation and scrutiny of evidence arrived at a conclusion that the prosecution was successful in bringing home the guilt of the Appellant - accused no. 1 for commission of offence under Section 302 of the IPC as well as for commission of offence under Section 498-A of IPC and the prosecution failed to establish its case against accused no. 2 Sitabai and accordingly in a detailed judgment and order awarded the conviction and sentence to accused no. 1 i.e. the appellant before this Court.

8. Learned Counsel appearing for the appellant vehemently submitted that the learned Trial Court failed to appreciate the evidence in its proper perspective and arrived at an erroneous conclusion. It is then submitted that though the prosecution claims that there are more than one dying declarations either in written form or in oral form, none of these dying declarations are trustworthy. It is also submitted that the medical officer while endorsing the dying declaration mentions the time as 1.30 pm as such, there is a serious doubt about the truthfulness of the said dying declaration and it would be unsafe to rely on any of the dying declarations. Learned Counsel then submitted that there are material omissions in the testimony of witnesses to whom alleged oral dying declarations are made. Learned Counsel further submitted that the oral dying declarations are made to the nearest relatives and his strained relationships due to allegations of ill-treatment the possibility of obtaining the oral dying declaration by tutoring cannot be ruled out.

9. Learned Counsel for the appellant further submitted that the appellant had accompanied deceased along with her relatives to the hospital, as such, it can be said that the appellant had no intention to

cause death of deceased as such, the appellant ought not to have convicted and awarded sentence by the trial Court under Section 302 of IPC. Hence, learned Counsel for Appellant prayed for allowing the appeal by quashing and setting aside the judgment and order passed by the Court below.

10. Per contra, learned APP appearing for the Respondent – State supported the judgment and order of the Trial Court and vehemently submitted that the prosecution brought on record clinching evidence in the form of written dying declarations, oral dying declarations, CA report and all these evidence unerringly establishes the factum of authorship of the crime by the accused only. Learned APP submitted that medical evidence in the form of postmortem report supported by the testimony of autopsy surgeon clearly establishes the homicidal death of deceased. Learned APP then submitted that all the dying declarations i.e. written and oral are specific in so far as the act committed by the appellant and the way act is committed by the appellant. The dying declarations written and oral inspire the confidence of the Court. Learned APP then submitted that the oral dying declarations are made to the parents, brother and sister of deceased and as

these persons came in contact with the deceased immediately after the incident and it was but natural to disclose the incident to these relatives and merely because they are the relatives of the deceased cannot be a ground to discard their testimonies or a ground to doubt the dying declarations when the version of these witnesses was trustworthy and unshaken.

11. Learned APP then submitted that apart from the oral dying declarations to the parents, sister and brother there is also an oral dying declaration to Dr. Satish Chandurkar (PW 10) and Dr. Chandurkar (PW 10) an independent witnesses having no relationship with the family of deceased, thus, it is the submission of learned APP that the prosecution had put forth clinching evidence against the appellant – accused and the Trial Court committed no error or illegality either in appreciation of evidence or in arriving at the conclusion. Learned APP, thus, prayed for dismissal of Appeal.

12. With the able assistance of the learned Counsel appearing for the Appellant and learned APP appearing for the Respondent – State, we have gone through the entire record and proceedings.

13. As stated above, the case of the prosecution preliminary rests upon the dying declarations i.e. written and oral along with other supporting materials in the form of panchanams and CA report.

Ramdas Sanap (PW 11), Police Head Constable attached to Wavi Police Station who is the person under the direction of his superior rushed to the Civil Hospital, Nasik on receipt of information that lady is subjected to burn and recorded the statement and proved written dying declaration which is first in point of time, as such, we may refer to the evidence of Ramdas Sanap (PW 11) at the threshold.

14. Ramdas Sanap (PW 11) after providing preliminaries, categorically stated that he recorded the statement of deceased in burn ward (Exh. 30). Prior to recording of the statement of deceased he inquired the medical officer who examined the patient about her condition. Then he deposed that the deceased had stated before him that her marriage was solemnized prior to two months and on 12.07.2013 she came to her matrimonial home for cohabitation. Her in-laws were present in the house. Her husband had gone to his workplace. In the evening he returned from his work. She further stated that after cooking

food the family took dinner and her in-laws went to sleep in her room. Her husband was sleeping in another room. At about 11.00 – 11.30 pm she went for urination outside the room, meanwhile her husband had taken her in the room where he was sleeping and asked as to why she had come to cohabit with him and why she does not take divorce from him. Deceased replied her husband that she does not want to give divorce and ready to cohabit with him. Accused was annoyed by the reply of deceased and he gagged her mouth and tied her hand with clothes and poured kerosene on her person and set her on fire by igniting matchstick by laying on ground. She further stated that in the burning condition she went towards the house of her sister who was residing adjacent to her house. Her sister, namely, Chhaya and her husband extinguished fire. Then she stated that she was subjected to ill-treatment at the hands of her in-laws. Relatives of deceased admitted her in the Civil Hospital. Statement of deceased was reduced in writing as per her narration. Ramdas Sanap (PW 11) further deposed that after reading over the statement and after seeking approval that the statement was correctly recorded Ramdas Sanap (PW 11) had obtained thumb impression of deceased on the statement. Then he signed on the statement as before

him. He had also obtained the endorsement of the medical officer. Then he came to Wavi Police station along with statement (Exh. 30) and on the basis of the statement crime was registered for the offence punishable under Section 307 of the IPC bearing Crime No. 101/2013.

Ramdas Sanap (PW 11) was subjected to cross-examination and though, the suggestions were made to this witness that the statement was already prepared on 12.07.2013 and only to suit the convenience the endorsement of the medical officer was shown to be taken on 13.07.2013, the said suggestion is flatly denied. Another suggestion was also given to this witness that the statement recorded by this witness was under the instructions of parents of deceased and even this suggestion was also denied.

Now this statement i.e. dying declaration is first in point of time recorded in the civil hospital by Ramdas Sanap (PW 11) having an endorsement of the medical officer Dr. Siddharth Shelke (PW 6) certifying that the deceased was in fit mental state to give statement.

Evidence of Dr. Siddharth Shelke (PW 6) also assumes importance in view of the submissions of defence. An attempt was made in the Trial Court to submit that the endorsement of Dr. Shelke was

obtained to suit the purposes as the statement was already recorded. It was submitted before the trial Court that the endorsement of Dr. Shelke refers to the timing as 1.30 pm and as such the said dying declaration is not trustworthy.

15. We may refer to the evidence of Dr. Siddharth Shelke (PW 6). Dr. Siddharth Shelke (PW 6) deposed before the Court that on 12.07.2013 he was discharging his duties as medical officer in burn ward at Civil Hospital, Nashik. At that time one patient, namely, Maya (deceased) daughter of Dashrath was admitted in burn ward. Police head constable of Wavi Police Station had requested him to examine patient as to whether she is in fit state to give statement. Accordingly, he had examined the deceased and gave his endorsement that the patient is conscious and able to talk and fully oriented. The endorsement was shown to the witnesses i.e. Dr. Shelke (PW 6) and the witness admits that is his endorsement. Dr. Shelke then deposed that he had examined the patient again on the request of special executive magistrate on 13.07.2013 and after examination gave an endorsement that the patient is conscious and able to talk and fully oriented before and after recording the statement.

As stated above, the defence made an attempt to submit before the Trial Court that in the endorsement of Dr. Shelke (PW 6) timing is referred to as 1.30 pm and as such, the endorsement was obtained only to suit the purposes, now Dr. Shelke (PW 6) deposed before the Court that the date mentioned in the said endorsement as 12.07.2013 and the time was put as 1.30 pm instated of 1.30 am.

Though, the witness was subjected to cross-examination and suggestion was made to the witness that the witness had not actually examined the patient and only put his signature on the paper brought by the police, this suggestion was denied.

While dealing with the submission of defence in respect of timing i.e. 1.30 pm the learned Trial Court observed that Dr. Shelke (PW 6) was on duty as medical officer on 12.07.2013. Deceased was shifted to the hospital in the intervening night of 12.07.2013 and 13.07.2013 the incident took place between 11.00-11.30 pm. Deceased came out of her house and rushed to her sister's house where the sister Chhaya and her husband extinguished the fire by covering deceased and then deceased firstly shifted to private hospital and thereafter was shifted to Civil Hospital, Nashik. Taking into consideration the sequence of events

learned Trial Court accepted the explanation offered by Dr. Shelke (PW 6) i.e. the date mentioned in the endorsement i.e. time was put as 1.30 pm instead of 1.30 am and in our opinion, learned Trial Court committed no error and the explanation provided by Dr. Shelke (PW 6) was justifiable and as such, was acceptable.

16. Now we may refer to evidence of Prakash Mahajan (PW 9), who was the Special Executive Magistrate at the relevant time. This witness also assumes importance in view of the fact that he had recorded the second dying declaration at Exh. 40. Prakash Mahajan (PW 9) deposed that on 13.07.2013 he received a request from Nashik Rural Police Station for recording dying declaration and accordingly, he went to Civil Hospital at about 9.30 am. First he met medical officer and disclosed reason for attending the hospital i.e. recording dying declaration of deceased. Then he requested the medical officer to examine the patient. Endorsement was then shown to Prakash Mahajan (PW 9). He admits that it is the same endorsement given by the medical officer before examination of deceased. Then he further deposed that he had taken the prescribed proforma for recording dying declaration. Then he removed all the relatives of the patient from the ward. Then he gave

his introduction to deceased and had put some introductory questions. Then he asked deceased as to whether she knows marathi and then asked her to disclose the real facts without any fear. Deceased then narrated the incident.

On a query made by Prakash Mahajan (PW 9) as to who had extinguished the fire and who had brought her to hospital, she answered that father-in-law of her sister who resides in front of her house extinguished the fire and her father brought her to the hospital. PW 9 then asked against whom she had a complaint to which deceased answered that she complains against her husband and mother-in-law. PW 9 then deposed that after recording the statement it was read over to deceased. She admitted the contents of the statement and thereafter she put her thumb impression on the statement. Thereafter medical officer was called to examine deceased and to give her endorsement about her condition accordingly Medical officer examined deceased and gave his endorsement. Photocopy of the statement was immediately handed over to police. The original statement was sealed in an envelop and was kept in office.

Prakash Mahajan (PW 9) produced the sealed envelop before

the Court. Envelop was having lac seal and the same was opened in presence of learned APP as well as learned defence Counsel. The perusal of the record shows that the defence in cross-examination suggested the failure of the witness in not sending the original dying declaration to the Court within one month from the date of receipt of its recording. Considering the admission of witness that it was his first recording of dying declaration it was the first occasion for him to record the dying declaration and prior to that he had not recorded any dying declaration and he had produced the original dying declaration in the Court in a sealed envelop and opened in the Court in presence of the learned APP and learned defence Counsel the version and evidence of this witness which is unshaken and the material aspects merely a failure to forward the original dying declaration to the Court within one month of recording would neither affect the credentials of the witness nor would make the dying declaration unacceptable.

17. As we have already referred to Dr. Shelke (PW 6) who had examined the deceased on the request of Prakash Mahajan (PW 9) and gave the endorsement on the statement, it may not be necessary for us to again refer the evidence of Dr. Shelke (PW 6).

18. Now we may refer to other set of witnesses. Sachin Dashrath Jedgule (PW 1) is the brother of deceased. PW 1 deposed before Court that on 13.07.2013 marriage of deceased was solemnized with the Appellant. He then deposed that the matrimonial house of deceased is in the same village as such she was frequently visiting her parental house. Then he refers to a visit of deceased 15 days prior to the incident to her parental home. As deceased was in sad mood parents made inquiry with her and she replied that appellant is demanding divorce and the accused no. 2 mother-in-law is insisting accused no.1 to give her ill-treatment. PW 1 further deposed that on 11.07.2013 the appellant had been to the paternal home of deceased for fetching her back but due to the late hours the parents decided to send her back to matrimonial home on the next date. He further deposed that on 12.07.2013 during night hours his sister Chhaya came to the house running and told them deceased was set on fire. PW 1 rushed to house of the appellant with Chhaya and he saw that deceased is in burnt condition and lying on the floor. He also says that the clothes of the deceased were completely burnt and smelling of kerosene. He had seen that the fire was extinguished by use of quilt . Then deceased told him that the appellant had poured kerosene on her

person and she was set on fire as she was not intending to him to give divorce. PW 1 then called his father so as to shift the deceased to hospital.

A pickup van of uncle of Sachin was arranged for shifting deceased to the hospital of Dr. Chandurkar (PW 10) at village Nandur Shingote. Dr. Chandurkar advised them to shift deceased to Civil Hospital Nashik. Accordingly, she was shifted in Civil Hospital, Nashik and deceased expired on 16.07.2013. PW 1 further deposed that his statement was recorded by police on 14.07.2013 and 16.07.2013.

Sachin (PW 1) was subjected to cross-examination. In cross-examination he deposed that on inquiry he came to know that Baban Bhaurao Gulve extinguished the fire by quilt. In the cross-examination suggestion was given to the witness that marriage of deceased with the appellant was not as per her choice, this suggestion was denied. Another suggestion was also given that at the relevant time of incident PW 1 was in the house of his paternal aunt, even this suggestion also denied.

19. Dashrath Yeshwant Jedgule (PW 2) who is father of deceased has also stated on the similar lines of Sachin (PW 1). In the cross-examination a suggestion was given to Dashrath that deceased wanted to

marry with one Kalu Gulhane and her marriage with accused was forcibly performed. It was also suggested that deceased wanted to take divorce from appellant – accused. It was also suggested that at the time of incident deceased was not in her matrimonial house. All these suggestions are denied by this witness.

20. Chhaya Ganesh Gulve (PW 3) is the sister of deceased. Initially she deposed that deceased used to tell her that the appellant used to make demand divorce from her and her mother-in-law was not talking properly with her. She further deposed that on 12.07.2013 deceased came in front of her house in completely burnt condition in between 11.00 – 12.00 pm in the night. Chhaya was sleeping in her house but due to hue and cry she woke up and find that deceased is in her house in burnt condition. Then Chhaya and her husband tried to extinguish fire by throwing blanket on her person. Chhaya then made inquiry as to who had burnt her. Then she called her father and brother and then they all took deceased in the private hospital and then she was admitted in the Civil Hospital. She further deposed that deceased expired on 16.07.2013.

In her cross-examination suggestions were given to Chhaya that on the date of incident deceased was not in her matrimonial home,

another suggestion was also given that deceased wanted to marry with one Kalu Gulhave, and deceased wanted to take divorce from appellant. It was also suggested to this witness that as deceased wanted to take divorce from the appellant and the appellant was not ready for that therefore, deceased committed suicide by setting herself on fire. All these suggestions are denied.

21. Janabai Dashrath Jedghule (PW 4) who is the mother of deceased. Her version is on the same lines of Sachin - PW 1, Dashrath – PW 2. In the cross-examination similar suggestions are put to this witness, namely, marriage of deceased with appellant was not of her choice and deceased wanted to marry with one Kalu Gulhave but all these suggestions are denied.

22. Santosh Ramchandra Donde (PW 5) is the carrier of the articles seized and collected in the process of investigation. They were kept in muddemal room and PW 51 head constable B.No. 2194 carried these articles to CA laboratory. PW 5 after depositing articles with CA laboratory obtained the acknowledgment. His statement is recorded by API Patil. In cross-examination a suggestion was given to this witness

that he had not given the muddemal property to CA laboratory, the same is denied by this witness.

23. Dr. Satish Balkrushna Chandurkar (PW 10), is the owner of Chandurkar Hospital at Nandur Shingote. Evidence of this witness also assumes importance as it relates to the oral dying declaration of deceased. Dr. Chandurkar (PW 10) deposed that he is the owner of Chandurkar Hospital at Nandur Shingote. He deposed that on 13.07.2013 when he was present in his hospital, in the midnight at about 12'O clock one girl in burnt condition was brought to his hospital by her parents, husband and in-laws. On examination he found that she had sustained superficial 50%. Then on query the patient disclosed her name as Maya Bhaurao Jedgule. Dr. Chandurkar (PW 10) then asked the patient as to what had happened, she narrated to PW 10 that she was inside the room with her husband and other family members were outside of the house. Her husband had tied her hands and gagged her mouth by clothes thereafter, he poured kerosene on her person and ignited matchstick and set her on fire. Dr. Chandurkar then deposed that before making inquiry he had examined the patient and at that time she was conscious, alert and oriented. Then he referred the patient to Civil Hospital, Nashik and

informed to the police. Police recorded his statement on 14.07.2013. Then he deposed that entry of the patient was taken in admission register. Then he deposed that copy of the extract admission register was handed over to the police. PW 10 is confronted with the extract (Exh. 42) and he admits that this is the same extract bearing his signature and seal. Then he deposed that he had brought the original admission register with him of which the office copy was handed over to police.

In cross-examination an attempt is made to bring a minor omission, namely, the word clothes. It was then suggested that PW 10 neither made any inquiry to the patient nor the patient discloses anything to this witness. It was also suggested that on the say of the relative of the patient PW 10 is giving his deposition. All the above suggestions are denied.

24. Now we come to the last set of witnesses i.e. PW 12, PW 7 and PW 8.

Devendra Tukaram Patil (PW 12) is the investigating officer, who took over the investigation from PSO Sanap. PW 12 deposed before Court that on the basis of entry of station diary entry handed over the investigation to him. He took the necessary steps such as, preparing the

spot panchanama in presence of the panchas, seizure of the articles from the spot of incident, effecting arrest of the appellant – accused no. 1 on 13.07.2013 and arrest of accused no. 2 on 14.07.2013. The he deposed that after preparation of spot panchanama he had been to Civil Hospital, Nashik and seized the apparels of deceased handed over to him by her brother. Then he deposed that he recorded the supplementary statement of deceased in the hospital. The he deposed that he had obtained an endorsement of the medical officer regarding the condition of the patient. Deceased disclosed him that her husband burnt her and her mother-in-law also gave ill-treatment to her. Then he deposed that statement was read over to deceased and she admitted about the same and after her admission her thumb impression was obtained on her statement. Then he deposed that he had recorded the statement of parents, brother and sister of deceased as well the statement of Dr. Chandurkar (PW 10).

Then he deposed about forwarding the seized articles to CA laboratory through carrier i.e. Police constable Donde and receipt of the CA report. Then he deposed that as deceased expired during the medical treatment, the offence under Section 302 of IPC was added by

submitting report to JMFC, Sinner and on finding sufficient incriminating material, forwarded the charge-sheet against the accused persons in the Court.

This witness was subjected to cross-examination. Suggestions were to this witness that the statement recorded was not read over to deceased nor the statement was recorded as per the narration of the deceased. It was also suggested to this witness that at the instance of relatives of deceased he had prepared the statements and lodged a false charge-sheet against the accused. All these suggestions are denied.

25. Dr. Rajendra Dattatraya Dusane (PW 7), is the medical officer working in Civil Hospital since the year 2011. On 14.07.2013 he was on duty as medical officer in casualty department. On 14.07.2013, API Patil made him a request to examine the deceased so as to enable him to record her supplementary statement, accordingly, he examined the deceased and gave endorsement that the deceased is in fit condition to give statement. He deposed that the said endorsement bears his signatures and seal of the Civil Hospital.

In cross-examination suggestion was given to this witness that this witness had not examined and police brought written papers

and obtained signatures on that written papers of this witness. These suggestions are denied by this witness.

26. Now we come to the last witness i.e. Dr. Asawari Bacchav (PW 8), is an autopsy surgeon. PW 8 deposed that on 16.07.2013 she was attached to Civil Hospital, Nashik as a medical officer and was on duty at casualty department. A dead body of deceased aged about 18 years was brought by police constable Shelke at about 5.55 pm for postmortem. She started conducting the postmortem at about 6.30 pm and completed the same at about 7.30 pm. During postmortem she found thermal burns on external examination about 65%. She opined that the probable cause to death due to cardiogenic shock due to thermal burns. She deposed that the postmortem notes at Exh. 35 are in her handwriting. She deposed that she also gave advance cause of death certificate at Exh. 36.

Though suggestion was made to this witness that without examination of the dead body she had prepared the postmortem notes, the same is denied.

27. On going through the entire record i.e. evidence brought by

the prosecution, we are of the opinion that the prosecution established its case against the appellant with sufficient and clinching evidence.

As stated above, the written dying declarations are trustworthy as they satisfy all tests. The dying declarations recorded by the investigating agency adhere to the settled legal procedure. Though, the learned Counsel for appellant vehemently submitted before this Court that dying declarations are doubtful, we are not able to find any fault in those dying declarations. At the cost of repetition, we may state that while endorsing the dying declaration the medical officer Dr. Shelke (PW 6) referred to the timing as 1.30 pm and as such, the dying declaration becomes doubtful. As stated above, on the minute scrutiny of the evidence and considering the sequence of events we find that the explanation provided by this witness is justifiable and reference to the words 'pm' is bonafide error. The oral dying declarations given to Sachin (PW 1), Dashrath (PW 2) Chhaya (PW 3) and Janabai (PW 4) parents, brother and sister of deceased respectively are also trustworthy and inspire confidence.

28. We also find that while recording the dying declaration which is first in point of time Ramdas Sanap (PW 11) took every care and

caution to remove relatives of the deceased from the ward. Thus, Ramdas Sanap (PW 11) assured that no relative is present in the ward and this care and caution ruled out each and every possibility of tutoring or influencing the deceased.

Learned APP was justified in submitting before this Court that the oral dying declaration and the disclosure of it to the nearest relatives cannot be a ground to reject them if the oral dying declarations are trustworthy and inspire the confidence of Court.

Apart from this oral dying declaration to the nearest relatives the immediate disclosure to Dr. Chandurkar (PW 10) is a very material piece of evidence against the appellant. Deceased who was set on fire was immediately brought to the hospital of Dr. Chandurkar (PW 10) at Nandur Shingote. Deceased disclosed to Dr. Chandurkar about the act committed by the appellant and how the act was committed by the appellant. Dr. Chandurkar (PW 10) had recorded so in the admission register which shows that deceased residence of Ramoshiwadi was admitted in the hospital on 13.07.2013 and was then discharged on the very day i.e. on 13.07.2013. Name of deceased finds place at Sr. No. 26 and admission no. 216 in the register of July 2013. Then there is extract

of the admission entry and had refers the history given by the deceased and it reads that homicidal burns by her husband. The admission register also refers burns to the extent of more than 50%.

29. On going through the evidence in reference to the written dying declarations and oral dying declaration, we are of the clear opinion that the prosecution has established the authorship of the crime i.e. the Appellant who had committed the offence. The prosecution also established that the appellant had knowledge and intention of the act and therefore, the submission of defence Counsel that the appellant accompanied the victim to the hospital would not give any benefit to the appellant. The defence theory of the death being either accidental or suicidal is also neither acceptable nor sustainable in view of evidence in the form of dying declarations and more particularly, in view of evidence of autopsy surgeon i.e. Dr. Asawari Bacchav (PW 8).

30. Though, the defence made an attempt to submit that it was the case of accidental death, we are unable to accept the submission of theory of accidental burn. Considering the time of accident it is brought on record by all sufficient evidence that the incident of setting victim on

fire took place on late hours i.e. at 11.00 – 11.30 pm. It would not stand either to logic or reason at this late hours the victim would carrying out any domestic activity like cooking and would receive accidental burns. Similarly, considering the evidence of Dr. Asawari Bacchav (PW 8) and more particularly, graphic display in the postmortem notes against column 17 under the caption of thermal burns, we are unable to accept the defence theory of accidental death. Along with this material, we may refer to another circumstance against the accused – appellant. As stated above in the process of investigation investigating officer collected/seized the clothes of the appellant i.e. white shirt and black pant and clothes of the deceased i.e. partly burnt saree, peticoat, blouse, quilt scarf which were sent by investigating officer to CA laboratory for chemical analysis. On examination of the said articles the serilogist found during chemical analysis that liquid on Exh. 1 plastic can is sample of kerosene Ex. 2 Jai om brand match box is suitable for kerosene residue examination. However, he found kerosene residue on Ex.3 to 10 are positive. It means he found kerosene residues on the clothes of the deceased and accused. It is the conclusive proof and having presumptive value which lends positive assurance that at the proximate time of happening of transaction

of this incident kerosene was poured on the person of the deceased by the accused – appellant. There is no plausible explanation u/s. 313 of the Cr.P.C of accused that how kerosene residues was found by serilogist on his clothes. So these circumstances also appear to be incriminating against the accused. This circumstance rules out the theory of defence of the death being either suicidal or accidental.

31. As the case of prosecution against the appellant for the offence under Section 302 of IPC rests on dying declarations, law in respect of dying declarations is settled. It is trait of law by way of various judgments of the Hon'ble the Apex Court as well as of this Court that the dying declaration even solitary one is sufficient enough to record the conviction if it satisfies the test of truthfulness and inspire confidence of the Court.

32. We may refer to an important judgment of the Hon'ble the Apex Court in the case of Laxman Vs. State of Maharashtra¹. The Hon'ble the Apex Court was pleased to observe thus:-

3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity,

¹ (2002) 6 SCC 710 : 2002 SCC (Cri) 1491

when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that

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

the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

33. Considering all these aspects, we are of the view that the learned Sessions Court has properly appreciated the evidence and arrived at conclusion thereby holding the appellant guilty of commission of offence under Section 302 of IPC and awarding the conviction and sentence to him.

34. In so far as the charge of commission of offence under Section 498-A of the IPC is concerned, we are of the opinion that the learned Sessions Court failed to appreciate the evidence in its proper perspective and by placing an undue emphasis on solitary reference in the evidence awarded the conviction and sentence for the offence punishable under Section 498-A of the IPC. The witnesses, namely, Satish (PW 1), Dashrath (PW 2), Chhaya (PW 3) and Janabai (PW 4), parents, brother and sister respectively only gave vague statement that

deceased was subjected to ill-treatment. There is absolutely no material to show any specification of such alleged ill-treatment and more particularly, considering the provisions i.e. 498-A of IPC and considering the evidence of these witnesses there is absolutely no material to hold the appellant guilty of offence under Section 498-A of IPC. For our purposes, we may refer to Section 498-A of IPC which reads as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

35. Learned Sessions Judge committed an error in drawing conclusion that deceased was subjected to mental harassment. Learned Sessions Court on one hand specifically observed that “there is no specific incident on record about causing mental harassment to deceased” and on the other hand recorded contrary findings holding the appellant guilty of offence under Section 498-A of IPC and awarded conviction and sentence.

36. The learned Sessions Court lost sight of the fact that material before the Court was only vague statements of the relatives of the deceased. Conviction u/s. 498-A could not have been awarded on the basis of vague statements. We may also refer to the following judgment of the Hon’ble the Apex Court in the case of Onkar Nath Mishra and Ors. Vs. State(NCT of Delhi) and Anr². The Hon’ble the Apex Court was pleased to observe thus:

17. The term cruelty, which has been made punishable under [Section 498A](#) I.P.C. has been defined in the Explanation appended to the said Section, to mean: (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to

² (2008) 2 SCC 561

cause grave injury or danger to life, limb or health whether mental or physical of the woman; or (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Therefore, the consequences of µcrueltyµ, which are either likely to drive a woman to commit suicide or to cause grave injury, danger to life, limb or health, whether mental or physical of the woman or the harassment of a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand are required to be established in order to bring home an offence under [Section 498A](#) I.P.C.

19. As regards the applicability of [Section 498A](#) I.P.C., in the complaint dated 8.11.1994 there is not even a whisper of a wilful conduct of appellants No. 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of [Section 498A](#) read with [Explanation thereto](#). The complaint refers to the talk the complainant purports to have had with her husband, appellant No. 3, who is alleged to have told her to come to Bijnore if she apologizes to his father;

keeps him happy; obeys his sister and talks to her father (complainants) to give her Rs. 50,000/- and VCR and brings these articles to Bijnore. We are convinced that the allegation of misbehaviour on the part of appellant Nos.1 and 2 and the demand of Rs. 50,000/- and VCR by them made by the complainant in her subsequent statement, dated 4.4.1995, was an after thought and not bona fide. [Section 498A](#) I.P.C. was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. Having carefully glanced through the complaint, the F.I.R. and the charge-sheet, we find that charge under [Section 498A](#) I.P.C. is not brought home insofar as appellant Nos. 1 and 2 are concerned. (Emphasis supplied)

37. Hence, we pass the following order:

ORDER

- a) Criminal Appeal is partly allowed.
- b) The conviction and sentenced awarded for the offence punishable under Section 498-A of the Indian Penal Code by judgment and order dated 01st September 2015 passed by the Additional Sessions Judge – 6, Nashik in Sessions

Case No. 322 of 2013 is quashed and set aside.

- c) The conviction and sentenced awarded for the offence punishable under Section 302 of the Indian Penal Code is upheld and maintained.

38. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)