

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 315 OF 2014

Parvatibai w/o Sambhaji Aamre
Age 47 years, Occ. Household
R/o. Barad, Tq. Mudkhed,
District Nanded

...Appellant

versus

The State of Maharashtra

...Respondent

AND
CRIMINAL APPEAL NO. 247 OF 2014

Sujata w/o Shivshankar Pawar
Age 22 years, Occ. Household
R/o. Nivgha, Tq. Mudkhed
District Nanded

...Appellant

versus

The State of Maharashtra

...Respondent

.....
Mr. Gajanan Kadam, advocate for the appellant
Mr. Sachin J. Salgare, A.P.P. for respondent-State
.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**Date of Reserving
the Judgment : 11.08.2021**

**Date of pronouncing
the Judgment : 08.09.2021**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Both these appeals are directed against the judgment and order of conviction dated 22.04.2014 passed by the Additional Sessions Judge-1, Nanded in Sessions Case No. 42 of 2012.

2. Brief facts giving rise to the present appeals, are as follows:-

i) Deceased Pushpa was given in marriage to Navnath Aamre, resident of Barad, Tq. Mudkhed, district Nanded some 2½ to 3 years back prior to the incident. Deceased Pushpa was treated well initially for a period of six months by her mother-in-law, brother-in-law (juvenile in conflict with law) and sister-in-law. However, thereafter she was subjected to cruelty for various reasons, prominent amongst it, that they did not like her. Even though the husband of deceased Pushpa used to give understanding to them but they did not listen to him also. The incident had taken place on 13.8.2011. Deceased Pushpa got up early in the morning and cooked the food for tiffin of her husband. Her husband was employed in a fertilizer shop at Nanded. Thus, the husband Navnath left the house for his work. Thereafter, the appellant accused No.1 Parvatibai, appellant accused No.2 Sujata and brother-in-law (juvenile in conflict with law) started quarreling with her for the reason that they did not like her. At about 11.00 a.m. when deceased Pushpa started taking her meal, at that time her brother-in-law (juvenile in conflict with law) had caught her hands and appellant-accused No.1 mother-in-law Parvatibai poured kerosene on her person and appellant accused No.2 sister-in-law Sujata ignited her with the help of match stick. Deceased was taken to Primary Health Center at Barad by their neighbours.

ii) On 13.8.2011 the police station, Barad had received one M.L.C. intimation about it from Rural hospital, Barad. However, by that time, the patient was referred to Government Hospital, Nanded. P.W.3 A.P.I. Kamlakar Patil went to Government Hospital, Nanded and after taking opinion of the Medical Officer as to the fitness and conscious state of mind of patient Pushpa, recorded her statement Exh.24. Deceased Pushpa had narrated entire incident to him and it was reduced into writing. Meanwhile, as per the request letter issued by the in-charge of Police Chowki of the Hospital of police Station Vazirabad, P.W.6 Pundlik Zunjare, the Special Judicial Magistrate has recorded the dying declaration of deceased Pushpa on 14.8.2011 after obtaining certificate from the concerned doctor recorded her statement Exh.48.

iii) On the basis of the said statement at Exh.24, A.P.I. Kamlakar Patil has registered crime No. 21 of 2011 for the offences punishable under Section 307, 498-A, 323 r.w. 34 of I.P.C. P.W.3 A.P.I. Kamlakar Patil has visited the spot and drawn the spot panchanama in presence of panchas. He has seized the articles from the spot i.e. one bottle of bisleri having residues of kerosene, one match box and one burnt matchstick were there. The said spot panchanama is marked at Exh.26. P.W.3 A.P.I. Kamlakar Patil has recorded the statements of witnesses. On the next day, on 15th (15.8.2011) he seized the clothes of deceased from the hospital under seizure panchanama Exh.27. He has effected arrest of appellant accused

No.1 Parvatibai on 20.8.2011 under arrest panchanama Exh.28 and also effected arrest of brother-in-law (juvenile in conflict with law) on 23.8.2011. The seized property was sent to the C.A..

iv) On 4.9.2011, P.W.3 A.P.I. Kamlakar Patil has received intimation from Vazirabad police station about death of patient Pushpa. He has received the inquest panchanama drawn by Vazirabad police station in the hospital at Exh.19. P.W.3 A.P.I. Patil had obtained permission from the Magistrate and added Section 302 of I.P.C. He has arrested appellant accused No.2 Sujata on 5.11.2011 under arrest pancahnama Exh.31. After completion of investigation, he has submitted charge sheet in the court and also separate charge sheet against accused brother-in-law (juvenile in conflict with law) to the juvenile court.

v) Learned Additional Sessions Judge-1, Nanded has framed the charge. The contents of the charge were read over and explained to the accused persons in vernacular. They pleaded not guilty and claimed to be tried. The prosecution has examined in all six witnesses to substantiate the charges levelled against them. After recording of evidence, the learned trial court has also recorded the statements of accused persons under Section 313 of Cr.P.C. The appellant accused has examined D.W.1 Navnath at Exh.65. Their defence is of total denial. As per their defence, while cooking the food, deceased Pushpa has suffered burn injuries accidentally. It is

also their defence that Sujata, who is married sister-in-law of deceased Pushpa, was at her matrimonial home and the defence witness Navnath, who happened to be the husband of deceased Pushpa, had been to her house for celebrating festival of Rakshabandhan.

vi) By judgment and order of conviction dated 22.4.2014 the learned Additional Sessions Judge-1, Nanded in Sessions case No. 42 of 2012 convicted both the appellants for the offences punishable under Section 302 of I.P.C. and also the appellant-accused No.1 Parvatibai for the offence punishable under Section 498-A of I.P.C. The learned Additional Sessions Judge has passed order to the following effect:-

“1. The accused No.2 Sujata w/o Shivshankar Pawar is acquitted under section 235 of Cr.P.C. of the offence punishable under section 498-A of the Indian Penal Code.

2. The accused No. (1) Parvatibai w/o Sambhaji Aamre and No. (2) Sujata w/o Shivshankar Pawar, are convicted under section 235(2) of Cr.P.C. of the offence punishable under section 302 r.w. 34 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine Rs.500/- each, in default to suffer rigorous imprisonment for six months.

3. The accused No.(1) Parvatibai w/o Sambhaji Aamre is convicted under Section 235(2) of Cr.P.C. of the offence

punishable under Section 498-A of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.500/-, in default to suffer rigorous imprisonment for one month.

4. The accused No.1 shall undergo substantive sentence concurrently.

5. The accused No.2 shall surrender her bail bonds.

6. The period of detention is given set off under section 428 of Cr.P.C.

7. Muddemal produced vide list Exh.13 being worthless of value, be destroyed after appeal period.

8. Copies of judgment be supplied to accused free of costs, under section 363 of Cr.P.C. after transcription, as per pursis Exh.78.”

3. Learned counsel for the appellants submits that the prosecution case entirely rests upon dying declarations Exh.24 and 48 respectively. There is no direct evidence in this case. Learned counsel submits that the said dying declarations are not consistent on material parts and there is no corroboration to the said dying declarations. P.W.6 Pundlik Zunjare the Special Judicial Magistrate has admitted that the appellants and relatives of deceased Pushpa met her in the hospital when he visited the hospital for recording the dying declaration. Thus, the possibility of tutoring cannot be ruled out. Learned counsel submits that P.W.6 Pundlik Zunjare has not

satisfied himself as to the conscious state of mind of deceased before recording her dying declaration. There is no evidence that deceased Pushpa was subjected to cruelty by the appellants-accused for the reason that they did not like her. The prosecution has not examined any witness on the point of cruelty at the hands of appellants-accused. Learned counsel submits that P.W.1 Balaji Lonwade, the panch witness to the spot panchanama Exh.26 and panch witness P.W.2 Sadashiv Tande for the seizure of clothes of deceased Pushpa Exh.27 have not supported the prosecution case and those panchanmas are exhibited merely on the basis of evidence of P.W.3 A.P.I. Kamlakar Patil.

4. Learned counsel for the appellants submits that the prosecution has examined P.W.4 Dr. Sarika Jawalikar, who has conducted the post mortem examination on the dead body of Pushpa. Learned counsel submits that though the incident had taken place on 13.8.2011, deceased Pushpa died on 4.9.2011. P.W.4 Dr. Sarika has noted percentage of burns to the extent of 38.40%. In her opinion, the cause of death was septicemia due to burn. P.W. 4 Dr. Sarika has admitted in her cross examination that due to the bacterial infection, toxin is created to that part of infection.

5. Learned counsel for the appellants submits that as per the prosecution story, in the form of dying declaration of the deceased, the incident had taken place without any premeditation and during

the course of quarrel. There is no clear opinion expressed by the Medical Officer, who has conducted the post mortem examination that the burn injuries sustained by deceased which is only 38.40%, were sufficient in ordinary course of nature to cause death. The incident had taken place on 13.8.2011 and deceased died almost after 22 days i.e. on 4.9.2011. The proximate cause of death was septicemia due to burn. Learned counsel submits that considering the same, the case would fall under Section 304 of I.P.C. and does not fall under Section 302 of I.P.C.

6. Learned counsel for the appellants submits that the prosecution has examined Navnath Aamre i.e. husband of deceased as D.W.1. He has deposed that on 13.8.2011 there was festival of Rakshabandhan. His sister appellant-accused No.2 Sujata married in 2010 and she was residing at Nivgha. On account of festival of Rakshabandhan, D.W.1 Navnath had been to the house of his sister at Nivgha for tying Rakhi. After half an hour, he had received a phone call from neighbour of village Barad informing him that his wife was burnt while cooking the food. D.W.1 Navnath has deposed that when the incident occurred the appellant accused No.2 Sujata was at Nivgha. He also deposed that appellant-accused No.1 his mother had been to agricultural field. His brother (juvenile in conflict with law) had been to the school. Learned counsel submits that the trial court has also acquitted appellant-accused No.2 Sujata for having committed offence under Section 498-A of I.P.C. It is thus clear that

deceased Pushpa was never subjected to cruelty as defined under Section 498-A of I.P.C. by the appellant accused Sujata. The prosecution has not examined any witness on the point that appellant-accused Sujata was at the spot of incident at the time of incident. Learned counsel submits that the appellant Sujata has 10 years old son and she is having her own family at village Nivgha. She is on bail during pendency of this appeal. The appellant accused No.1 Parvatibai has undergone 10 years of sentence, as she was under trial and during pendency of this criminal appeal, she is not on bail. Learned counsel submits that both the accused may be acquitted.

Learned counsel for the appellants in order to substantiate his contentions, placed reliance on the following cases:-

- i) Sham Madhavrao Rupvate vs. State of Maharashtra, reported in 2000 Cri.L.J. 2389,
- ii) Subhash vs. State of Maharashtra, reported in I(2006) DMC 261,
- iii) Khokan vs. State of Chhattisgarh, reported in AIR 2021 SC 939,
- iv) Nallapati Sivaiah vs. Sub Division Officer, Guntur, A.P. reported in AIR 2008 SC 19.

7. Learned A.P.P. Mr. Salgare submits that the complaint/dying

declaration Exh.24 and dying declaration Exh.48 recorded by the Special Judicial Magistrate are reliable and consistent on material parts and inspiring confidence. P.W.3 A.P.I. Kamlakar Patil has recorded the complaint/dying declaration of deceased Pushpa at Exh.24 after obtaining opinion from the treating doctor. The said Medical Officer has examined the patient and found to be conscious oriented and accordingly made the endorsement to that effect on the complaint/dying declaration. Similarly, P.W.6 Pundlik Zunjare, Special Judicial Magistrate has also obtained the similar opinion from the treating doctor before recording dying declaration Exh.48 and the said dying declaration Exh.48 also bears endorsement at the top and at the bottom of dying declaration in handwriting of the doctor and his signature below it certifying that the patient was conscious oriented to deliver the statement and she was conscious oriented throughout the process of recording of statement.

8. Learned A.P.P. submits that the prosecution has also examined P.W.5 Dr. Girish Umare to corroborate the same. Learned A.P.P. submits that P.W.3 A.P.I. Kamlakar Patil has also drawn the spot panchanama immediately on the same day and seized the articles under the spot panchanama Exh.26. Those articles are one plastic bottle of bisleri having residues of kerosene, one match box and one burnt matchstick. Learned A.P.P. submits that the appellants-accused have raised false defence about accidental death while cooking the meals. There is nothing on the spot indicating that

deceased Pushpa had sustained burns accidentally. Learned A.P.P. submits that the appellant accused No.1 Parvatibai poured kerosene on the person of deceased Pushpa and appellant-accused No.2 Sujata set her on fire with the help of matchstick. There was clear intention to commit murder. Death due to septicemia due to burns are usually the known complications and on the basis of the same no inference could be drawn about the intention of the appellants accused for causing culpable homicide not amounting to murder. Learned A.P.P. submits that the appellant accused No.2 Sujata has not examined herself before the court. The appellants accused have raised this defence afterthought and accordingly D.W.1 Navnath, who happened to be the husband of deceased Pushpa, has deposed to save his married sister. Learned A.P.P. submits that there is no substance in these appeals and the appeals are thus liable to be dismissed.

Learned A.P.P. in order to substantiate his contentions placed reliance on the following cases:-

- i) Purshottam Chopra and another vs. State (Government of NCT of Delhi), reported in (2020) 11 SCC 489,
- ii) Laxman vs. State of Maharashtra, reported in 2002 AIR (SC) 2973,
- iii) Lahu Ramchandra Bandpatte vs. State of Maharashtra,

reported in 2009 (2) Bom.C.R. (Cri.) 227

9. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witness, the statement of the appellants-accused recorded under Section 313 of Criminal Procedure Code, the evidence of the appellants-accused themselves and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in these appeals and the same must be dismissed.

10. The prosecution case rests upon two dying declarations Exh.24 and Exh.48. Both the dying declarations are consistent on material parts. P.W.3 A.P.I. Kamlakar Patil has recorded the complaint/dying declaration Exh.24 in the burn ward at the Government Hospital, Nanded where the deceased Pushpa was admitted on sustaining burn. P.W.6 Pundlik Zunjare, The Special Judicial Magistrate has recorded the dying declaration Exh.48.

11. The incident had taken place on 13.8.2011 at about 11.00 a.m. to 11.30 a.m.. Deceased Pushpa after sustaining burns was initially taken to Rural Hospital, Barad and thereafter shifted to Government Hospital, Nanded. On 14.8.2011 at around 1.00 p.m. P.W.3 A.P.I. Kamlakar Patil has recorded complaint/dying declaration of deceased Pushpa at Exh.24 and on the same day i.e. on 14.8.2011 itself, P.W.6 Pundlik Zunjare, Special Judicial Magistrate has recorded the

dying declaration of deceased Pushpa in between 6.00 p.m. to 6.30 p.m. Before recording the dying declarations Exh.24 and Exh.48, respectively, P.W.3 A.P.I. Kamlakar Patil and P.W.6 Pundlik Zunjare, the Special Judicial Magistrate had approached the concerned Medical Officer to ascertain as to whether the patient Pushpa was in conscious state of mind and was able to give her statement.

12. P.W.5 Dr. Girish Umare was on duty as R.M.O. on 14.8.2011 at Civil Hospital, Nanded. According to him, on 14.8.2011 at around 1.00 p.m. P.W.3 A.P.I. Kamlakar Patil came into burn ward No.14 where the patient Pushpa was admitted. A.P.I. asked Dr. Girish Umare that he wanted to record the statement of patient Pushpa and whether the patient was in a condition to give the statement. Dr. Girish Umare took P.W.3 A.P.I. Kamlakar Patil with him and went to the patient. Dr. Girish Umare examined the patient. He has checked her pulse, B.P. He asked her name. She had stated her name. He got satisfied from examination and answer from the patient that she was in condition and oriented to give the statement. Accordingly, he put his endorsement on the complaint/dying declaration Exh.24 and also signed below it. According to him, P.W.3 A.P.I. Kamlakar Patil has recorded the statement of deceased Pushpa in his presence. After recording the statement, P.W.3 A.P.I. Kamlakar Patil had asked Dr. Girish Umare to examine the patient and to give his opinion. P.W.5 Girish Umare has again examined Pushpa by examining her pulse, B.P. and found that she was stable throughout recording of

statement. Dr. Girish Umare again put his endorsement to that effect at the bottom of dying declaration stating therein that the patient was conscious during entire period of recording the statement. P.W.5 Dr. Girish Umare has admitted his endorsement which is in his handwriting and his signature below it. He has also deposed that in the evening time, P.W.6 Pundlik Zunjare came to ward No.14 and he had approached to him firstly. He had informed to him that he wanted to record the statement of patient Pushpa. Thus, P.W.5 Dr. Girish Umare went to the patient Pushpa in ward No.14 and he has also examined the patient. He checked her pulse, B.P. and also asked her some questions, which she replied. Dr. Girish Umare satisfied that the patient was conscious and oriented. He has made endorsement to that effect on the top of the dying declaration. According to him, P.W. 6 Pundlik Zunjare, the Special Judicial Magistrate has recorded her statement and after completion of her statement, he has again examined patient Pushpa and put his endorsement at the bottom of the dying declaration. He has also identified the endorsement with his signature below it.

13. In both the dying declarations Exh.24 and 48, respectively, recorded at different times, the patient Pushpa has consistently stated that on 13.8.2011 in the morning the incident had taken place in her matrimonial home at about 11.00 a.m. to 11.30 a.m. when she was taking her meals and at that time the appellants-accused and her brother-in-law were sitting on the cot behind her. They started

her abusing in filthy language. Deceased Pushpa had further stated that the brother-in-law caught hold of her hands, appellant accused No.1 mother-in-law Parvatibai poured kerosene on her person from one plastic bottle and appellant-accused No.2 Sujata sister-in-law set her on fire with the help of matchstick. She went outside of the house by making hue and cry. She has given the details in her complaint/dying declaration at Exh.24 that she herself poured water on her person and tried to extinguish the fire. She immediately shifted to the hospital by neighbours.

14. In both the dying declarations, she had given reason that the appellants accused did not like her. The appellant accused No.1 Parvatibai mother-in-law wanted to perform the marriage of her son Navnath (husband of deceased Pushpa) with her niece and thus, she used to scold deceased Pushpa by saying that she did not like her. Deceased Pushpa was subjected to abuses and beating continuously by them.

15. P.W.3 A.P.I. Kamlakar Patil after recording the complaint/dying declaration of deceased Pushpa at Exh.24 went to the police station and submitted the statement to the P.S.O. On the basis of the said statement/dying declaration crime No. 21 of 2011 came to be registered and he took over investigation of the same. Thereafter, P.W.3 A.P.I. Kamlakar Patil rushed to the spot of incident for drawing spot panchanama. On reaching there, he found that the house was

locked and key was kept with the neighbour. Thus, he had taken the key from the neighbour and opened the lock of the house. P.W.3 A.P.I. Kamlakar Patil has seized the articles, i.e. one bottle of bisleri having some kerosene in it, one match box and one burnt matchstick from the spot of incident. Though P.W.1 panch witness on the spot panchanama has not supported the prosecution case, however, the prosecution has proved the contents of the spot panchnama through P.W.3 A.P.I. Kamlakar Patil. There is no reason to discard the spot panchnama Exh.26 and contents thereof for the reason that the panch witness has not supported the case. It is specifically mentioned in the spot panchanama that one DVD player was kept on the TV and one plastic bisleri bottle having residues of kerosene found kept on the said DVD player, one match box and one single burnt match stick were found there. It is also mentioned in the spot panchanama that in the room where TV is kept, towards its western side one cot was kept. It is not necessary to repeat here that deceased Pushpa had stated consistently in both the dying declarations that the appellants accused and her brother-in-law (juvenile in conflict with law) were sitting on the cot in the said room. There is reference in both the dying declarations about pouring of kerosene from plastic bottle, igniting her with the help of match stick from the match box. P.W.3 A.P.I. Kamlakar Patil has also seized the clothes of deceased from the hospital. There were pieces of burnt Saree. There was smell of kerosene on those pieces. Panchanama of seizure of clothes is marked at Exh.27. C.A. report is marked at

Exh.32. Empty plastic bottle is marked at Exh. A (1), partially burnt black bead necklace put in polythene wrapped in paper is marked at Exh.A (2). Partially burnt saree put in a polythene wrapped in paper marked at Exh.B. The Exhibits 1 to 3 were sent for analysis and as per the report Exh.32 the results of the test for detection of kerosene residues on Exhibit Nos. (1), (2) and (3) are positive. P.W.4 Dr. Sarika Jawalikar, who has conducted the post mortem examination also noted burn injuries in the post mortem report Exh.38. According to her, the said burn injuries superficial to deep and the cause of death is septicemia due to burn.

16. In the case of ***Purushottam Chopra and another vs. State (Government of NCT of Delhi) (supra)*** relied upon by learned A.P.P. for the State, the Supreme court by referring the principles laid down by the Constitution Bench in the case of Laxman vs. State of Maharashtra, (2002) 6 SCC 710 and by referring the principles laid in various cases decided earlier, such as (i) Koli Chunilal Savji vs. State of Gujarat, (1999) 9 SCC 562, (ii) State of M.P. vs. Dal Singh, (2013) 14 SCC 159, (iii) Bhagwan vs. State of Maharashtra, (2019) 8 SCC 95, (iv) State of Punjab vs. Gian Kaur, 1998 SCC (Cri) 942, (v) Gopalsingh vs. State of M.P. (1972) 3 SCC 268, (vi) Dalip Singh vs. State of Punjab (1979) 4 SCC 332, (vii) Thurukanni Pompiah vs. State of Mysore, AIR 1965 SC 939, (viii) Uka Ram vs. State of Rajasthan, (2001) 5 SCC 254, summarized some of the principles relating to dying declarations and its admissibility and reliability in

para 21 to 21.8 of the judgment, which are as follows:-.

“21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:-

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

21.2. The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying

declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.”

17. It is well settled that the dying declaration could be the sole basis for conviction even without corroboration, if it inspires confidence of the court. The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement and it was a voluntary statement. So far as the burn cases are concerned, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement. In the instant case, we find the complaint/dying declaration Exh.24 recorded by P.W.3 A.P.I. Kamlakar Patil and the dying declaration Exh.48 recorded by P.W.6 Pundlik Zunjare, Special Judicial Magistrate truthful, consistent and made voluntarily. There is nothing in the cross examination to indicate that the same is result of tutoring, prompting and imagination. Further, the dying declarations are corroborated by other evidence on record. Both the dying declarations inspire confidence and they are not suffering from any infirmity, such as want of fit state of mind of the declarant or like

nature.

18. Learned counsel for the appellants in the alternate has submitted that deceased Pushpa had sustained burn injuries to the extent of 38.40% and the cause of death is also due to septicemia due to burns. Learned counsel submits that though incident had taken place on 13.8.2011 deceased Pushpa died on 4.9.2011 i.e. after 22 days of sustaining burns. Learned counsel submits that as per the incident narrated by deceased Pushpa in both the dying declarations, the incident had taken place as of a sudden without any premeditation during the heat of passion upon sudden quarrel. Learned counsel submits that exception 4 of Section 300 of I.P.C. stands attracted and in the alternate both the appellants-accused may be convicted under Section 304 of I.P.C.

19. In the case of ***Subhash vs. State of Maharashtra (supra)*** relied upon by learned counsel for the appellants, the Division Bench of this Court observed that deceased was admitted in a hospital only with 45% of burns and she died after thirty nine days of the incident. The offence committed by the appellant would fall within the ambit of Section 304 of I.P.C. In the facts of the cited case, the appellant/husband of the deceased was under the influence of liquor, poured kerosene on the person of deceased Rekha and set her on fire. In the above cited case, this court has also held that the dying declaration is truthful, inspiring confidence and deceased was in fit

condition to give the dying declaration. In para 17 of the said case, this Division Bench of this Court has made following observations:-

“17. The next question, which falls for our consideration in the present case, is as to whether the offence committed by the appellant is a murder under Section 300, Indian Penal Code, or a culpable homicide not amounting to murder as defined under Section 304, Part-I or Part-II of Indian Penal Code. In the instant case, the deceased was admitted in the hospital on 18th May, 1993 with 45% of burns and she died after thirty nine days, i.e. on 26th June, 1993. The opinion of the doctor reflected in Exh. 18 (admitted document) shows that the cause of death was Septicemia due to burns. In the instant case, the evidence of the prosecution is completely silent with regard to the treatment given to the deceased during the course of her stay in the hospital and in absence thereof, it is not known as to whether the proper medical treatment was administered to the deceased when she was alive for thirty nine days after the incident. Similarly, in the instant case, recitals in the dying declaration show that the appellant on the day of incident was consuming liquor right from the morning and at the relevant time, he rushed towards deceased, poured kerosene on her person and set her on fire. It is, no doubt, true that in the normal set of circumstances, in such a situation, it can safely be inferred that the act is committed with an intention of causing death of the deceased. However, in the peculiar facts and circumstances of the present case, as referred to herein above, it is possible to hold that the deceased did not succumb only due to burn injuries sustained by her and the possibility of death due to Septicemia, in absence of any evidence about medical treatment given to the deceased, cannot be ruled out, particularly when the deceased died after thirty-nine days and, therefore, the evidence of the prosecution demonstrates that

the appellant has caused burn injuries to the deceased with an intention of causing such bodily injuries as are likely to cause death and the offence committed by the appellant, therefore, would fall within the ambit of provisions of Section 304, Part-I of the Indian Penal Code.”

20. In the case of ***Khokan vs. State of Chhattisgarh (supra)*** relied upon by learned counsel for the appellants, the Supreme court has also observed that there was no evidence about any premeditation on the part of the accused. There was sudden quarrel with respect to money and the accused pushed the deceased and stood on the abdomen in the heat of passion upon a sudden quarrel. Therefore, the case would fall under exception 4 to Section 300 of I.P.C.

21. In the case of ***Sham Madhavrao Rupvate vs. State of Maharashtra (supra)*** relied upon by learned counsel for the appellants, the Division Bench of this court observed that clause three of Section 299 of I.P.C. applies and thus the case squarely falls under Section 304 (II) of I.P.C. In para 18 of the said judgment, the Division Bench of this Court has made the following observations:-

“18. For the said reasons we feel that the trial Court was justified in placing reliance on dying declarations and finding involvement of the appellant in the incident established beyond the pale of all doubts.

We however, make no bones in observing that the learned trial judge erred in convicting the appellant for offence under

Section 302, I.P.C. The statement of Muktabai recorded by police havaladar Sudam Mahajan PW-3 and oral dying declaration made by Muktabai to Pushpa Tadpade PW-6 on 25-4-1995 at about 7 p.m. clearly show that the appellant got enraged by Muktabai's act of eating first and hence set her on fire. A perusal of the post mortem report, which has been proved by Dr. Ravindra Ashtaputre shows that Muktabai did not die directly as a consequence of her burns but died due to septicemia due to 75% burns which she had sustained. The evidence of Pushpa Tadpade PW-6 shows Muktabai died more than 1 1/2 months after the incident viz, on 13-6-1995.

It is in the aforesaid background that we have to examine the circumstance that Dr. Ravindra Ashtaputre who performed the autopsy did not state in his deposition in the trial Court that Muktabai's injuries were sufficient in the ordinary course of nature to cause death. Since there is no evidence to the effect that her injuries were sufficient in the ordinary course of nature to cause death, clause thirdly of Section 300, I.P.C. would be inapplicable. In our view the other three clauses of Section 300, I.P.C. would also be inapplicable.

But all the same it can be safely presumed that when in the aforesaid background that appellant poured kerosene oil on deceased Muktabai and set her on fire he committed an act with the knowledge that he was likely to cause her death, in terms of clause thirdly of Section 299, I.P.C. the breach of which is punishable under Section 304(ii), I.P.C.

We accordingly hold that the appellant is guilty of an offence punishable under Section 304(ii), I.P.C.”

22. In the instant case, Exception 4 of Section 300 of I.P.C., is relevant for the present discussion, which is re-produced herein below:-

"300. Murder -

.....

.....

Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offence having taken undue advantage or acted in a cruel or unusual manner."

23. In the instant case, the manner in which the incident had taken place indicates that it was done with premeditation. The appellants accused used to torture deceased Pushpa mainly for the reason that they did not like her and appellant accused No.1 Parvatibai was intending to perform the marriage of her son with her niece, but unfortunately, deceased Pushpa's marriage was performed with her son. It further appears from the sequence of crime that co-accused brother-in-law (juvenile in conflict with law) had caught hold the hands of deceased Pushpa, appellant accused No.1 mother-in-law Parvatibai had poured kerosene from a plastic bottle and appellant accused No.2 Sujata sister-in-law had immediately set on fire deceased Pushpa with the help of a match stick that it was not a sudden quarrel. Deceased Pushpa was taking meals at that time. The manner in which deceased Pushpa was set on fire while she was taking meals, the only inference could be drawn that the appellants-accused have acted in a cruel/unusual manner.

Deceased Pushpa ran outside of the house and extinguished the fire by pouring water on herself. Deceased Pushpa had also stated in her complaint/dying declaration that literally she put her head in a domestic water tank for extinguishing the fire. The appellants-accused and co-accused have not tried to extinguish the fire. Had it been the incident occurred without premeditation and in a heat of passion upon a sudden quarrel, the appellants accused would have immediately repented and attempted to extinguish the fire but they did not.

24. P.W.4 Dr. Sarika Jawalikar has also stated in her cross examination that the burn injuries were superficial to deep. Even at the time of post mortem, she had seen that central circulated system and perripheral circulated systems were damaged.

25. In our considered opinion the ratio laid down in the cases relied upon by learned counsel for the appellants are not applicable to the facts and circumstances of the present case. Though, learned counsel for the appellants accused has vehemently submitted that there is mark discrepancy between two dying declarations Exh.24 and Exh.48 respectively, however, we do not find any substance in it. Both the dying declaration are consistent on material parts and inspiring confidence.

26. The learned counsel for the appellants has tried his level best

to convince us that how the case of the appellant accused No.2 Sujata is different and it can be segregated. Learned counsel for the appellants took us through the evidence of D.W.1 Navnath, who happened to be husband of deceased Pushpa. We have also carefully gone through the evidence of D.W.1 Navnath. D.W.1 Navnath has deposed that his sister appellant accused No.2 was at village Nivgha and on 13.8.2011 he had been to the said village Nivgha for festival of Rakshabandhan. Even he has made futile attempt to suggest that he was residing separately alongwith his deceased wife Pushpa. He has further deposed that the appellant accused No.2 Sujata was at Nivgha at the time of incident, appellant accused No.1 mother-in-law was in the agricultural field and his brother (juvenile in conflict with law) was in the school. He has gone to the extent by saying that his wife remained unconscious from 13.8.2011 to 4.9.2011 i.e. till her death. However, there is no attempt on his part to explain as to how his wife died at her matrimonial home. Though he had tried to suggest that she had sustained accidental burns, however, the contents of spot panchanama Exh.26 so also other evidence, discussed in length in the foregoing paras, ruled out the said possibility.

27. In our considered opinion, the trial court has rightly held both the appellants-accused viz. Parvatibai and Sujata guilty of the offences punishable under Section 302 r.w. 34 of I.P.C. and also the appellant accused No.1 Parvatibai guilty of the offence punishable

under section 498-A of I.P.C. Accordingly, no case is made out for interference. Hence, the following order:-

O R D E R

- I. Criminal appeal No. 315 of 2014 (Parvatibai Sambhaji Aamre vs. The State of Maharashtra) and criminal appeal No. 247 of 2014 (Sujata Shivshankar Pawar vs. The State of Maharashtra) are hereby dismissed.
- II. Criminal appeals are accordingly disposed of.

(**SHRIKANT D. KULKARNI J.**)

(**V. K. JADHAV, J.**)

rlj/