

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 862 OF 2015

Kamlesh Bhimrao Katole,
Age: 27 Years, Occu : Service,
R/o. Sainagar, Ranjangaon (Shenpunji),
Taluka : Gangapur, District Aurangabad.
At present lodged at Nashik
Road Central Prison.

.. APPELLANT

VERSUS

State of Maharashtra

.. RESPONDENT

...

Mrs. Rashmi S. Kulkarni, Advocate for the
appellant [Appointed].
Mr.A.S.Shinde, APP for the respondent-State.

...

**CORAM : V.K.JADHAV AND
S.G.DIGE, JJ.**

**RESERVED ON : 05.07.2021
PRONOUNCED ON : 28.07.2021**

JUDGMENT (Per : S.G. Dige, J.) :

The appellant impugns a judgment and order dated 2nd July, 2014 in Sessions Case No.333 of 2012, whereby he is convicted for the offence punishable under sections 302, 498-A and 504 of the Indian Penal Code, 1860 (for short, "IPC"). For the offence

punishable under section 302 of IPC, the appellant is sentenced to suffer rigorous imprisonment for life with fine of Rs.3,000/-, in default, to undergo further imprisonment for three months; for the offence punishable under section 498-A of IPC, the appellant is sentenced to suffer rigorous imprisonment for two years with fine of Rs.1,000/-, in default, to undergo further imprisonment for two months and for the offence punishable under section 504 of IPC, the appellant is sentenced to suffer rigorous imprisonment for one year with fine of Rs.500/-, in default, to undergo further imprisonment for one month. The trial Court has directed to run all the sentences concurrently.

Brief facts :

2] The case of the prosecution is that the appellant and deceased Smt. Jaya (for short, "Jaya") were married three years prior to the incident. Both were living in a rented premises at Rajangaon. On 29th August, 2012, the appellant had beaten Jaya with belt and fist blows on trifling reason. On 30th August, 2012, at around 11.00 a.m. there was quarrel

between appellant and Jaya. At around 3.00 p.m., appellant started abusing Jaya without any reason, hence Jaya asked him, why he was harassing her without any reason. Then the appellant told Jaya to pour kerosene on herself. When she poured kerosene, appellant again instigated to pour more kerosene on herself. She again poured more kerosene on herself, then the appellant set her on fire by lighting matchstick. Immediately, the appellant poured water on her and with the help of mattress doused fire and ran for help and got her admitted in GHATI hospital, Aurangabad. While under treatment, the statement of Jaya came to be recorded by the Police Constable-PW-9-Shaikh Mohammad. On the basis of that statement, the crime was registered under sections 307, 498-A and 504 of IPC against appellant. After filing the first information report (for short, "F.I.R."), appellant was arrested on 31st August, 2012. Jaya's statement was also recorded by the Special Executive Magistrate-PW-11-Krishna Shinde. Unfortunately, while under treatment Jaya passed away on 4th September, 2012. Crime under section 302 of IPC came to be added in the matter.

3] After completing the investigation, the charge-sheet was filed against the appellant. The case was committed to the Sessions Court in usual manner. The case was tried by the learned Additional Sessions Judge, Vaijapur. The appellant abjured his guilt and desired to face the trial.

4] The prosecution in support of its case examined 13 witnesses. After completion of the prosecution evidence, the statement of appellant under section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") was recorded. It was defence of the appellant that the said incident was happened due to burst of stove.

5] Heard learned Advocate for the appellant and learned APP for the Respondent/ State.

6] Questioning the correctness of the conviction, it is urged by the learned Advocate for appellant that the learned Trial Court has convicted appellant on the basis of the dying declarations, but there are inconsistencies in written and oral dying declaration of Jaya. The said dying

declarations are given at the instance of her parents. Though the incident was happened at 3.30 p.m., Jaya had not uttered any word against appellant till 9.30 p.m., so reliance cannot be placed on dying declarations. Learned counsel relied on the judgments in the cases of *Kalabai Vs. State of Madhya Pradesh (AIR 2019 SC 2135)*, *Sampat Babso Kale & another Vs. State of Maharashtra [(2019) 4 SCC 739]*, *Sharifabi Sabirshah Vs. State of Maharashtra [2013 [2] Bom.C.R. [Cri.] 137]*, *Manju Ram Kalita Vs. State of Assam [(2009) 13 SC 330]* and *Shivaji Janaba Patil & others Vs. State of Maharashtra, [2004] 1 Mh.L.J. 411.*

7] It is the contention of learned APP that the prosecution has proved the case beyond reasonable doubt. Two written dying declarations of the deceased are consistent. In the said dying declarations, the deceased has stated about the incident and cause of her death. Learned APP relied on the judgments in the cases of *Virsa Singh Vs. State of Punjab, reported in 1958 AIR [SC] 465*, *Rajwant Singh : Kalarimadathil Unni Vs. State of Kerala, reported in 1966 AIR [SC] 1874* and *Bhagwan Bahadure Vs. State of*

Maharashtra, reported in 2007 AIR [SC] [Supp] 917.

8] Before we proceed to dwell upon the issue raised regarding the dying declarations, it is apposite to refer the postmortem report, which has been proved by PW-12 Dr.Vijay Kamble. It has come in his evidence that he conducted postmortem of the deceased Jaya. There were 81% burn injuries on her body. The postmortem report is at Exhibit-53. The final opinion of the doctor is that death was caused due to septic shocks due to burn injuries. The said opinion was not challenged.

9] We may fruitfully note here that this witness has not at all been examined on the point that the said injuries might have been caused due to burst of stove, which was defence of appellant. On this backdrop, the testimonies of the witnesses, who have deposed about the narration of incident to them by deceased i.e. dying declarations, are to be scrutinized.

10] As per prosecution case, there are two dying declarations given by Jaya. First

dying declaration was given before PW-9-Shaikh Mohammad-Police Constable and second dying declaration was given before PW-11 Krishna Shinde- [SEM]. Apart from these dying declarations, Jaya has stated about the incident to her father PW-3-Ganesh Kakade, mother PW-4-Ratnamala Kakade, PW-5-Kashinath Kolhapure and PW-7-Parmeshwar Landge.

Written dying declarations :

11] The first dying declaration is recorded by PW-9 - Shaikh Mohammad. He has stated that on 30th August, 2012, he was attached to M.I.D.C. Police Station as a Head Constable. When he was on duty, Police Sub-Inspector (for short, "PSI") - Shri Kurundkar gave him Medicolegal Case (for short, "MLC") for making enquiry [Exhibit-38]. He went to GHATI hospital in Ward No.22/23, where injured Jaya was admitted. He gave letter to Medical Officer. It is at Exhibit-40. Doctor examined Jaya in his presence and made endorsement that patient is conscious, oriented in time, place and person to make the statement. He had recorded the statement of Jaya in presence of doctor. She told him that appellant used to quarrel with her on

account of household work. On 30th August, 2012, appellant came to house at around 11.30 a.m. Before that, at 10.30 a.m. he had gone to Company for work. Jaya asked appellant why he came back to the house, that time appellant told her, she was not his master to ask any question. Thereafter, appellant started beating her. She further stated that on that day at around 3.00 p.m., there was quarrel between them. Appellant abused her and told her to pour kerosene on herself. Accordingly, she poured kerosene on her person, then the appellant instigated her to pour more kerosene, hence she poured more kerosene on herself. At that time, appellant by lighting matchstick set her on fire. She received burn injuries on her both legs, hands and face. Thereafter, neighbours came there. They and appellant took her in Rickshaw and got her admitted in the hospital. This witness further stated that he has recorded the statement of Jaya as per her say. It was read over to her and then obtained her thumb impression on it. It bears his signature. It is at Exhibit-41. He handed over the statement to the Police Station Officer. On that basis, the offence was registered. In cross-examination, this

witness admitted that when he went there, relative of Jaya were present. This witness denied the suggestion that said dying declaration was recorded as per say of relative of Jaya.

12] PW-11-Shri Krishna Shinde deposed that on 30th August, 2012, he was working as Special Executive Magistrate at Aurangabad. On that day, he received letter from the Police to record the dying declaration of Jaya Kathole. The letter is at Exhibit-39. Thereafter, he went to GHATI hospital in Ward No.22/23. On the basis of the letter given by the Police, he asked doctor whether a patient is in a position to give statement or not. Doctor examined the patient and opined that the patient was in position to give statement. Doctor endorsed on the said letter. Endorsement is at Exhibit-36. Then this witness introduced himself to patient and informed her about his purpose to visit her. The relatives, who were present there, were asked to go out of the ward. When this witness asked Jaya how she received burn injuries, she answered that at 3.00 p.m., she herself poured kerosene on her person and appellant set her on fire. This witness asked

her why it was happened. She replied that her husband used to quarrel with her on trifle grounds and she had grievances against her husband. This witness read over statement to Jaya, and obtained her thumb impression on it. Dying declaration is at Exh.47. Record shows PW-11 recorded statement of Jaya in question-answer form. In cross examination this witness admitted that when he went in Hospital relatives of Jaya were sitting near the bed of Jaya and she was not talking with them. This witness denied the suggestion that statement of Jaya recorded as per say of her relative. The evidence of these witnesses establishes that Jaya stated before them about cause of her death i.e. set on fire by appellant. Jaya had not stated to PW-11 about the incident of 29.08.2012, but she has stated about the incident happened on 30.08.2012. Evidence of these witnesses regarding cause of death of Jaya by appellant is cogent and convincing.

State of mind of deceased Jaya :

13] In respect of Jaya's mental condition at the time of giving dying declarations, it is necessary to see evidence

of Dr.Surendrakumar - PW-8, who was present at that time. PW-8 Dr.Surendrakumar Dhole deposed that on 30.08.2012, Jaya was admitted in hospital, he examined her at 9.30 p.m. She was conscious, oriented in time, place and person to give valid statement. Accordingly, he endorsed on letter. His endorsement is at Exhibit-35. Head Constable-H.B.Shaikh recorded dying declaration of Jaya in his presence. On 30.08.2012, the Special Executive Magistrate gave letter to him. He examined Jaya. She was conscious, oriented in time, place and person to give valid statement. Accordingly, he endorsed said letter. It is at Exhibit-36. Accordingly, the Special Executive Magistrate recorded statement of Jaya in his presence. In cross-examination, this witness stated that he had given treatment to Jaya alongwith other group of Doctors.

Oral dying declarations :

14] So far as oral dying declarations are concerned, PW-3-Ganesh Kakade, who is father of Jaya, deposed that after four months of marriage, appellant started ill-treating Jaya, when she would come to his

house, she informed to this witness about ill-treatment given to her by appellant, thereafter there was settlement in between appellant and Jaya, then she went to reside alongwith appellant at Ranjangaon. Appellant used to ill-treat Jaya on account of household work, he used to beat her with belt, leg and fist blows, Jaya told this witness about the ill-treatment and beating to her when she had been to house of this witness, however, this witness convinced Jaya and sent her to house of appellant. On 30.08.2012, he received phone call from appellant informing about the incident, he and his wife went to GHATI hospital. There they met Jaya. She was conscious when they went there. This witness made inquiry with her. She told him that on 29.08.2012 appellant quarreled with her on account of not bringing flour from the flour mill, and appellant had beaten her with belt. On 30th August, 2012, appellant quarreled and beaten her with belt. At around 3.00 p.m. when she asked appellant why he was ill-treating her and torturing her, that time appellant told her to pour kerosene on herself, then appellant again asked her to pour more kerosene if she can dare. Therefore, she

poured more kerosene on herself. Then appellant set her on fire by lighting matchstick. She further stated to this witness that appellant had brought water in bucket and tried to extinguish fire and brought her to GHATI hospital. This witness further stated that when the Police and Special Executive Magistrate came in GHATI hospital, he and others were asked to go out of ward. In cross-examination, this witness reiterated that he was asked to go out at the time when the Magistrate recorded statement of Jaya. No suggestion was given to this witness that Jaya gave statement to PW-9 and PW-11 at the instance of this witness and other relatives.

15] PW-4-Ratnamala Kakade- mother of Jaya deposed that after marriage, appellant and in-laws of Jaya were ill-treating her, Jaya told this witness about ill-treatment when she had been to house of this witness. Thereafter, appellant and Jaya were residing separately. Appellant was quarreling with Jaya on trifling grounds, he used to beat her, Jaya used to tell about harassment by appellant, when she would come to house of this witness. On 29.08.2012, appellant beaten

Jaya with belt on account of not preparing food grains for flouring. On next day also appellant beaten Jaya, therefore she asked appellant why he used to beat her constantly, then appellant told her to pour kerosene on her person, Jaya poured kerosene on herself, then appellant asked her to pour more kerosene if she dares, again Jaya poured more kerosene on herself then appellant set her on fire. Appellant tried to extinguish fire. After receiving information about the incident, this witness along with her husband [PW-3] went to GHATI hospital. At that time Jaya was conscious, she told this witness about the incident. At that time appellant was present there, when Executive Magistrate had come to record statement of Jaya they were asked to go out of ward. In cross-examination this witness denied suggestion that, Jaya has not stated anything to this witness in hospital.

16] PW-5 — Kashinath Kolhapure deposed that on 2nd September, 2012 he received information about the incident. He went to hospital and met Jaya. Jaya told this witness about the incident that appellant beaten her with belt. Appellant asked her to pour

kerosene on herself and again instigated to pour more kerosene on herself. Thereafter, appellant set her on fire, and then took her to hospital. In cross-examination, this witness admitted that he is friend of father of Jaya. This witness denied suggestion that this witness had not been to GHATI hospital to meet Jaya.

17] PW-7-Parmeshwar Landge deposed that PW-3 is his relative. On 3rd September, 2012, he received phone call from PW-3 to come to GHATI hospital as Jaya was admitted there. This witness went there and made inquiry with Jaya. She told him that appellant set her on fire. At that time, Jaya was in position to talk. Nothing has been elicited in cross-examination of this witness.

18] From the evidence of witnesses, it reveals that Jaya has stated before them about the incident in detail and cause of her death i.e. setting her on fire by appellant. PW-9 and PW-11 are independent witnesses, who recorded statement of Jaya. Though, it is the contention of learned Advocate for the appellant that at the time of recording statement, Jaya was not in fit state of mind

to give statement and there are inconsistencies in dying declarations and the statement was tutored by her relative, but from the evidence of PW-9, PW-11 and PW-8, it reveals that before recording her statement, PW-8 had examined Jaya and after finding she is in fit state of mind to give statement, then he endorsed on the letter i.e. at Exhibit-40 and Exhibit-39, his endorsements are at Exhibit-35 and Exhibit-36 respectively, then only he allowed to record statement of Jaya. While recording the statement on both occasions PW-8 was present.

19] If the evidence of PW-9, PW-11 and PW-8 are considered as a whole, it appears that there is no contradiction, or discrepancies, about recording of statement of Jaya. There are minor variations in oral dying declarations of Jaya, but it cannot dent to prosecution case, there are no inconsistencies in statement of Jaya, as over all tone of statement of Jaya recorded by PW-9 and PW-11 shows that appellant was ill-treating her and he is author of her burn injuries. There is nothing on record to show that there was tutoring to Jaya except bare suggestions given to witnesses, on the

contrary from the evidence of PW-9, PW-11 and PW-8 it shows that while recording statement of Jaya, they had asked relatives to go out of ward. Their evidence is corroborated by evidence of PW-3 and PW-4.

20] In the case of ***Sampat Babso Kale and another V/s State of Maharashtra (2019) 4 SCC 739 [supra]***, the Hon'ble Apex Court has held that where the victim had 98% burns and the doctor has stated from the record that a painkiller was injected at 3.30 a.m. and the dying declaration had been recorded thereafter, there is a serious doubt whether the victim was in a fit state of mind to make the statement. She was suffering from 98% burns. She must have been in great agony and once a sedative had been injected the possibility of her being in a state of delusion cannot be completely ruled out. It would also be pertinent to mention that the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way round.

21] In the present case, the doctor (PW-8) has specifically stated that Jaya was in a fit state of mind on both occasions, he was present while recording her statement on both occasions, he endorsed on paper before recording her statement that she was in fit state of mind and conscious.

22] It is contention of the learned Advocate for appellant that there was delay in recording dying declarations, incident was happened at around 3.30 p.m., whereas Jaya's dying declaration was recorded at 9.30 p.m. The evidence on record clearly shows that after incident Jaya was admitted in hospital around 4.00 to 4.30 p.m. thereafter the Police machinery swung into action. MLC was recorded by the Police and then letter was given to the PW-9 to make enquiry, letter was also given to Special Executive Magistrate [PW-11] after completing all formalities. Her dying declaration was recorded without delay. It is contention of learned Advocate for the appellant that the prosecution failed to prove cruelty by appellant to Jaya. Shivganga Rathod PW-1 owner of house where the appellant and deceased were residing on rent,

in her cross examination admitted that she never heard about the quarrels between Jaya and appellant, it proves Jaya was not subjected to cruelty.

23] In the case of *Manju Ram Kalita V/s State of Assam (2009) 13 SCC 330 [supra]*, the Hon'ble Apex Court has held that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established.

24] As observed by the Apex Court intention should be inferred by nature and conduct or brutal act of complained. In the present case, it has come in the evidence of PW-9 and PW-11 that Jaya has stated before them about the cruelty by appellant to her i.e. beating her with belt and fist blows, constant abusing her on trifling reasons. Dying declarations are at Exh.41 and Exh.47. The said evidence is corroborated by PW-3 – father of Jaya and PW-4- mother of Jaya, in whose evidence it has come on record that

after marriage appellant used to harass Jaya on trifling reasons. Not hearing the quarrels by PW-1 does not mean Jaya was not ill-treated by appellant. Conduct of appellant constitutes the act of cruelty.

Death : homicidal or accidental

25] It is contention of learned Advocate for the appellant that the incident was happened due to burst of stove but to implicate appellant, Jaya had given false dying declarations. Prosecution alleges that death of Jaya is homicidal whereas defence states that it is accidental. No doubt it is burden on prosecution to prove the case, it would be appropriate to scrutinize the evidence came on record. Jaya had sustained 81% burn injuries. PW-12 – Dr.Kamble has stated about injuries as under :-

1) There was blue ink mark over right thumb on the dead body.

2) The description of the burns is as follows:

a)	Head Neck Face	-	5%
b)	Chest	-	9%
c)	Abdomen	-	9%
d)	back	-	18%

e)	Right upper limb	-	9%
f)	left upper limb	-	9%
g)	Right lower limb	-	12%
h)	left lower limb	-	10%

	Total	-	81%

There are 18% burn injuries on back side of Jaya, had it been burst of stove more injuries would have been caused to front side body of Jaya i.e. face, chest and stomach as well as except burn injuries other injuries i.e. metal pieces injuries would have been caused to Jaya and appellant but the other injuries were not appearing on body of Jaya. More over no cooking material was found on spot of incident as well as stove is not seized from the spot of incident when spot panchanama Exhibit-60 was prepared by PW-13 Dashrath Chaudhari - Investigating officer, PW-2 - Syed Mukhtar was panch on spot panchnama, did not support prosecution case. PW-13 has stated that on 31.08.2012 he visited spot of incident, PW-1 showed him that spot, he seized bislery bottle having lid of blue colour, it had smell of kerosene partly burnt match stick box, partly burnt white shirt, partly burnt jeans pant. These are at Articles A to D. These articles were sent for C.A. examination. Letter is at

Exh.65. The C.A. report is at Exh.67. This C.A. report shows blue colour bottle. Exh.1 is sample of kerosene. Kerosene residue detected on Exh.2 i.e. partly burnt saffron coloured cloth pieces, Exh.4 partly burnt white full shirt, Exh.5 a whitish jean full pant, Exh.3 unsuitable for analysis i.e. a plus 2, brand match box containing intact match sticks. C.A. report strengthens prosecution case as bislery bottle had kerosene sample, it proves that kerosene was in that bottle and it was poured on herself by Jaya, the bottle was empty it means Jaya had poured all kerosene which was in that bottle, kerosene residues found on clothes of appellant, it means at the time of pouring kerosene, he was nearby. The room where appellant and Jaya were residing was a small room, had there been burst of stove certainly there would have been damage caused to other articles in that room or there would have been impact of it but nothing found when PW-13 visited there. Moreover no stove is seized from incident spot. Evidence on record establishes that death of Jaya was homicidal and not accidental.

Whether act of appellant amounts to murder or culpable homicide not amounting to murder:

26] Learned Advocate for appellant submitted that appellant had no intention to kill Jaya, he had tried to extinguish fire and got her admitted in Hospital, he also sustained injuries on his palm, though he had knowledge about the act, but it was happened in sudden provocation, hence appellant's act fall under section 304 Part-II of IPC. It is contention of learned APP that the appellant had intention, knowledge while setting Jaya on fire and he was ill-treating her on trifling grounds.

27] In the case of *Kalabai Vs. State of Madhya Pradesh (supra)*, the Hon'ble Apex Court has held that there is no evidence of any strained relations between appellant and deceased. It is relevant to notice that the entire incident which was happened has been elaborately described by the deceased herself in her dying declaration. There is no evidence to come to conclusion that the appellant had any intention to kill the deceased. There cannot be any issue that when a person throws a burning stove on a person

there is knowledge that the act is likely to cause death.

28] In the case of ***Subhash Ramji Kumbhar Vs. State of Maharashtra (supra)***, the Division Bench of this Court has held that once it is established by extenuating circumstances that the ingredient of intention cannot be established or that having regard to the facts of the case, it cannot be said that the accused had an intention to cause the said fatal injury. By inference, only knowledge can be attributed to the accused of the consequences that may follow and hence, it would be culpable homicide punishable under section 304 Part-II of IPC.

29] In the case of ***Virsa Singh Vs. The State of Punjab*** reported in ***1958 DGLS [SC] 20 [supra]***, the Hon'ble Apex Court has held that the prosecution must prove the following facts before it can bring a case under Section 300 of IPC; *firstly*, it must establish, quite objectively, that a bodily injury is present, *secondly*, the nature of the injury must be proved; these are purely objective investigations, *thirdly*, it must be

proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and *fourthly*, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient is sufficient to cause death in the ordinary course of nature. Once these four elements are established by the prosecution, the offence is murder under Section 300 of IPC.

30] Considering rival submissions, the question that falls for our determination that in the facts of case at hand what offence is committed by appellant, is it murder or culpable homicide not amounting to murder.

31] Section 300 of IPC is reproduced as under:

300. Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Culpable homicide not amounting to murder. -

Exception 1 -

Exception 2 -

Exception 3 -

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 offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

Whether the culpable homicide is with intention or knowledge is paramount for the purpose of determining nature of the offence. It has come on record that appellant was treated by PW-10 - Dr.Mahankale for burn injuries on right forearm, the said injury was simple in nature. Certificate is at Exhibit-44. From the evidence of prosecution witnesses, it establishes that the appellant used to harass the deceased Jaya on trifling reason. He used to beat her with belt and fist blows as well as was abusing her. The dying declarations of Jaya are at Exhibit-41 and 47. From these dying declarations and evidence of PW-9 and PW-11, it establishes that appellant beaten the deceased on earlier day of incident. He abused her on the day of incident and at the time of incident, he instigated her to pour kerosene on herself. When she poured less kerosene on herself, he instigated her to pour more kerosene and then set her on fire. From evidence of PW-3 and PW-4 it establishes that the appellant was ill-treating Jaya after marriage. Their

marriage was performed before three years prior to incident. Jaya ventilated her grievances against appellant to them. There was settlement between appellant and Jaya. It appears that the appellant was emboldened by his acts as there was no one to prevent him from giving ill-treatment to Jaya. So it might have in his mind that nothing would happen to him if he commits any act with Jaya. Evidence on record shows that there was no incident happened which had caused sudden provocation or heat of passion to appellant to set Jaya on fire. The appellant was quite prudent to know that kerosene is highly inflammable, when Jaya poured less kerosene then he instigated her to pour more kerosene and set her on fire; it means appellant was having due knowledge that Jaya had poured sufficient kerosene on herself, if he set her on fire she will die it proves he had intention and knowledge while committing this act. Though he had tried to extinguish fire but it cannot wipe out his guilt. The ill-intention of appellant further proves from his act while admitting to Jaya in hospital, he had given information to the Police that Jaya got burn injuries due to burst of stove, but his claim falsified when the statement of

Jaya was recorded by PW-9 and PW-11. Hence act of appellant does not fall under Section 304 Part-II of IPC.

Acceptability of dying declarations :

32] Needless to state that principles are well settled by Hon'ble Apex Court in the judgment, for arriving at an opinion in regard to proof of a prosecution case on the basis of dying declarations, as held by the Hon'ble Supreme Court in the case of ***Purshottam Chopra and another Vs. State (Government of NCT of Delhi)***, reported in [2020] 11 SCC 489, which reads thus:

- (1) *A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.*
- (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.*
- (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.

- (4) When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.*
- (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.*
- (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.*
- (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.

- (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.*

Applying these principles to the facts of the present case, from the written and oral dying declarations of Jaya, it establishes that appellant was ill-treating and beating her on trifling reasons, he instigated her to pour kerosene on herself, when it was less then instigated her to pour more kerosene on herself, then set her on fire by lighting matchstick, then tried to extinguish fire, took her to hospital, seizing of articles from spot i.e. bisleri bottle having smell of kerosene, half burn match stick box, proves that Jaya did not suppress any fact and stated about actual incident, otherwise she would have stated that appellant had poured kerosene on her and set her on fire, but she did not state that, she had specifically stated what happened on that day and earlier day, it proves ring of

truth in her statements and these are truthful and trust worthy. These are voluntary, consistent. Her statement about cruelty is corroborated by evidence of PW-3 and PW-4 i.e. father and mother of Jaya. Evidence of PW-8 proves that she was in a fit state of mind at the time of giving dying declarations. Hence we do not find merit in the contention of learned Advocate for the appellant that he has been falsely implicated in this case.

Conclusion:

33] We, thus, find no reason to interfere with the impugned judgment and order. The Appeal is accordingly dismissed.

34] Since Mrs.Rashmi Kulkarni, learned counsel is appointed to prosecute the case of the appellant, we quantify her legal fees and expenses at Rs.20,000/- [Rupees Twenty-Thousand] to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.

[S.G.DIGE,J.]

[V.K.JADHAV,J.]