

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.533 OF 2016**

Ningappa Dhanappa Naikwadi	]	
Aged about 33 years, at present	]	
undergoing a sentence of Life	]	
Imprisonment at Kolhapur Central	]	
Prison, as convict prisoner No.C-6419	]	Appellant
Vs.		
THE STATE OF MAHARASHTRA	]	Respondent

.....

Ms. Nasreen S.K. Ayubi, appointed Advocate for Appellant.

Mr. Arfan Sait, A.P.P. for Respondent-State.

.....

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

**RESERVED ON : 20th SEPTEMBER, 2021.
PRONOUNCED ON: 5th OCTOBER, 2021.**

JUDGMENT: [Per Prithviraj K. Chavan, Judge]:

1. Feeling aggrieved with and dissatisfied by the impugned judgment and order dated 10th August, 2015 rendered by the Additional Sessions Judge, Solapur in Sessions Case No.311 of 2013 holding the appellant guilty of the offence punishable under

sections 498-A and 302 of the Indian Penal Code, 1860 (for short 'I.P.C'), the present appeal has been preferred amongst following facts and grounds.

2. Deceased Laxmi was married with the appellant about four to five years before the incident and the couple was co-habiting in a rented room at Lodhi Galli, Solapur. The prosecution case is that the appellant was addicted to liquor who used to ill-treat and beat his wife regularly under the influence of liquor. Laxmi delivered a girl child in the month of January, 2012. PW.2- Kasturi Mane is the mother of Laxmi who had borrowed Rs.10,000/- from the master of the appellant for the delivery expenses of Laxmi. The appellant was demanding the said amount and, therefore, was insisting upon his wife to bring back Rs.10,000/- from her mother. Laxmi was continuously being harassed and ill-treated by the appellant on that count.

3. On the fateful day of 23rd June, 2013 around 1.30 p.m, the appellant picked up quarrel with Laxmi for the same reason and started assaulting her. He poured kerosene on the person of Laxmi from a stove and set her ablaze with a match stick. Due to her shouts, neighbours gathered and doused the flames. Laxmi was admitted to Civil Hospital, Solapur.

4. PW.5-Nitin Chougule, Police Sub Inspector attached to Sadar Bazar Police Station, after receiving an information rushed to the Civil Hospital, Solapur. He summoned Special Judicial Magistrate for recording a dying declaration of Laxmi. He also requested

Doctor to examine the victim and to certify as to whether she was in a fit and conscious state to give her statement. After having received an endorsement from the Doctor to that effect, it appears that this witness had recorded the first dying declaration of the victim. The said dying declaration is at **Exhibit 38**. Second dying declaration (**Exhibit 35**) came to be recorded by P.W.4-Dayanand Mane, Special Judicial Magistrate.

5. On the basis of the said dying declaration, a crime was registered bearing C.R. No.203 of 2013. P.W.5 - Nitin Chougule being an Investigating Officer had visited the scene of occurrence. He had drawn a spot panchanama. He had seized a red coloured stove, one cap of the stove, one match box of AIM Company, one piece of burnt match stick, one burnt piece of saree and one burnt piece of petticoat. Accordingly, a panchanama was drawn which is proved at **Exhibit 39**. He had also seized a shirt and pant of the appellant which had smell of kerosene. He arrested the accused.

6. Unfortunately, on 24th June, 2013, Laxmi succumbed to burn injuries. P.W.5 - Nitin Chougule had, therefore, prepared an inquest panchanama (**Exhibit 41**). The dead body was sent for autopsy. The autopsy report is at **Exhibit 42** which indicates that Laxmi died due to 95% burn injuries. Viscera and other articles were sent for chemical analysis. After recording the statements of the witnesses, he laid a charge-sheet under section 304-B of the I.P.C against the appellant in the Court of Chief Judicial Magistrate, Solapur.

7. Learned Chief Judicial Magistrate by an order dated 7th October, 2013 committed the case for trial to the Sessions Court as the offence was exclusively triable by the Sessions Court.

8. The appellant appeared before the learned Sessions Judge on 21st January, 2014. Even though the charge-sheet has been filed under section 304-B of the I.P.C, the learned Additional Sessions Judge, in his wisdom, framed a charge under section 498-A and 302 of the I.P.C in terms of **Exhibit 6**. It was read over to the appellant in vernacular. The appellant pleaded not guilty and claimed a trial.

9. The defence as emerged from the line of cross-examination as well as from his statement under section 313 of the Criminal Procedure Code, 1973 (for short 'Cr. P.C") is that he had not committed any offence and that death of Laxmi occurred due to bursting of the stove while cooking. No defence evidence has been adduced on his behalf.

10. Having considered the evidence of the prosecution witnesses, dying declarations of Laxmi and other material placed on record, the learned Additional Sessions Judge found the appellant guilty of the offences punishable under sections 498-A and 302 of the I.P.C. The appellant has been sentenced on two counts viz; first, under section 498-A of the I.P.C for which he has been sentenced to undergo rigorous imprisonment for three years and a fine of Rs.1,000/- (Rs. One Thousand only), in default, to suffer rigorous imprisonment for one month and on the second

count for the offence punishable under section 302 of I.P.C to suffer rigorous imprisonment for life with fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month.

11. We heard Ms. Nasreen Ayubi, learned Counsel for the appellant.

12. At the outset, learned Counsel for the appellant would argue that the prosecution has failed to prove motive behind the offence. According to the learned Counsel, it was an accidental death due to bursting of the stove while the deceased was cooking. Learned Counsel has taken us through the evidence of P.W.4-Dayanand Mane, (**Exhibit 34**), Special Judicial Magistrate who had recorded second dying declaration of Laxmi by contending that the Magistrate had not written the name of the deceased below her thumb impression and, therefore, it is doubtful as to whether it was a genuine dying declaration of the deceased. Learned Counsel has also questioned veracity of the evidence of P.W.7-Dr. Priyanka Alwekar by drawing our attention to the fact that the said witness did not produce medical case papers of the deceased to indicate as to what kind of treatment was given to the deceased before recording her dying declaration. It is the contention of the learned Counsel for the appellant that normally, in cases of burn injuries, sedatives such as Morphine and Pathadine are administered due to which patient suffers from drowsiness and, therefore, unable to give a correct statement.

13. On the other hand, the learned A.P.P has supported the impugned judgment by contending that the learned trial Court has considered each and every aspect and reached a correct conclusion in holding the appellant guilty of the offences punishable under sections 498-A and 302 of the I.P.C.

14. This is one more unfortunate and sad demise of young woman due to the pernicious custom of demand of dowry by the husband, who in a drunken spree, poured kerosene on her person and set her ablaze.

15. The prosecution story mainly revolves around two dying declarations coupled with oral evidence of P.W.2-Kasturi Mane-Laxmi's mother and P.W.3- Kiran Khandewale an immediate neighbour.

16. Evidence of P.W.3-Kiran Khandewale is of vital nature, in the sense, he was the first witness who, after hearing screams and shouts of Laxmi rushed to their house. His evidence indicates that the appellant had been regularly torturing and beating Laxmi under the influence of liquor after returning home from his massonary work. Several efforts were made by this witness to convince the appellant but it fell on deaf ears. On the fateful day of 23rd June, 2013 around 12.30 p.m when the witness was sitting outside his house, he heard shouts of Laxmi and, therefore, rushed to their house only to witness Laxmi engulfed in fire and was shouting that her husband had set her on fire. He categorically testified that the appellant was standing outside the house with his

daughter. This is what the first hand account of the incident deposed to by P.W.3-Kiran Khandewale.

17. Nothing could be elicited from P.W.3-Kiran during his cross-examination which would render his testimony unworthy of credit, except one insignificant contradiction, in the sense, that the maternal uncle of Laxmi and this witness were on visiting terms which he had specifically stated before the Police. That itself would not make his evidence unacceptable and unbelievable, for, otherwise his testimony is quite consistent and believable in the light of the dying declarations of Laxmi. P.W.3-Kiran Khandewale has no axe to grind against the appellant.

18. Now, turning to the testimony of P.W.2-Kasturi Mane who has corroborated the evidence of P.W.3-Kiran Khandewale in material particulars. Even though her evidence is of hearsay nature, in the sense, she has testified about the incident as narrated to her by Laxmi, yet, on the aspect of continuous torture and ill-treatment meted out to her daughter, she has categorically testified about the same.

19. Sum and substance of the evidence of P.W.2-Kasturi Mane is that Laxmi was married with the appellant seven years ago. Initially, they co-habited at Mumbai, however, due to heavy rains the couple shifted to Solapur. Kasturi Mane had arranged for a rented room in the area of Nal Bazar Chowk at Solapur. Behaviour of the appellant, right from the beginning, was improper who always used to beat and torture Laxmi under the influence of

liquor. When Laxmi was pregnant for the first time and came to her natal home, the appellant had been to their house and used to beat Laxmi under the influence of liquor. Previous behaviour and conduct of the appellant as well as motive is writ large and would definitely attract ingredients of section 8 of the Indian Evidence Act.

20. It reveals from the evidence of P.W.2-Kasturi Mane that she had borrowed Rs.10,000/- from the Contractor i.e employer of the appellant to meet the expenses of delivery of Laxmi. She, *inter alia*, informed the appellant to repay the loan to his master. However, it is stated that the appellant was adamant in not repaying the loan, rather he was insisting upon Laxmi to ask her mother P.W.2-Kasturi to repay the amount since, according to him, the expenses of the first delivery are to be borne by her mother.

21. Evidence of this witness further reveals that when she rushed to the Civil Hospital, Solapur, on the very day, Laxmi had narrated as to how the appellant had poured kerosene on her person from the stove and set her on fire. While pouring kerosene on her person he was shouting that she should bring Rs.10,000/- from her mother. Unfortunately, Laxmi succumbed to the burn injuries two days thereafter.

22. A futile attempt has been made to rebut the testimony of this witness by the defence. Usual suggestion has been given to her that Laxmi caught fire due to bursting of the stove while cooking which she has categorically denied. This is what precisely the

defence of the appellant. The appellant while answering the last question in his statement under section 313 of the Cr. P.C stated that it was an accidental death due to bursting of the stove. The fact that the appellant has been demanding Rs.10,000/- which were spent for the expenses of the first delivery of Laxmi has been proved to be an omission, albeit not material, nevertheless, the cross-examination further substantiate the said fact as the defence has categorically asked this witness that she had borrowed an amount of Rs.10,000/- from the Contractor namely Dashrath Birbanwale who is an employer of the appellant.

23. It is further brought forth in the cross-examination that till that date, Dasharath Birbanwale could not recover Rs.10,000/- from the salary of the appellant. This strengthens the prosecution story that Laxmi was subjected to cruelty and torture by the appellant for his demand of Rs.10,000/-. The cross also reveals that when Police recorded the statement of Laxmi in the form of her first dying declaration, P.W.2- Kasturi Mane was not present over there.

24. Interestingly, it is evident from the report of the Regional Forensic Science Laboratory (**Exhibit 53**) that the stove which was sent for analysis was intact with certain amount of bluish colour liquid namely kerosene in it and it was without lid. This falsifies the defence of the appellant that it was an accidental death due to bursting of the stove. At the same time, the report further reveals that a half shirt and a full pant of the appellant which was seized at the time of his arrest was also detected with kerosene, in the

sense, residues of kerosene were found over his garments. We shall discuss this aspect in the succeeding paragraphs.

25. As per section 106 of the Indian Evidence Act, it was incumbent upon the appellant to discharge the onus as to how Laxmi got drenched with kerosene and caught fire when admittedly, except he and Laxmi, nobody was present in their one room house admeasuring 20'x8'. These facts were within his special knowledge. Moreover, impassive and pathetic reaction of the appellant i.e not at all attempting to extinguish fire speaks volumes which further proves and exhibits his strong motive to eliminate his wife. Even if he along with one Dasharath shifted Laxmi to the Hospital thereafter, at the most, it can be said to be realization of the gravity of the offence only after committing it.

26. The most significant evidence adduced by the prosecution in this case is in the form of two dying declarations which are at **Exhibit 35** and **Exhibit 38** recorded by Mr. Dayanand Mane and Mr. Nitinin Chougule respectively.

27. P.W.5–Nitin Chougule received an information from the Civil Hospital, Solapur about a medico legal case which is at **Exhibit 37**. According to this witness, a Medical Officer was giving treatment to Laxmi. P.W.5-Nitin Chougule had immediately summoned Special Judicial Magistrate. Before arrival of the Magistrate, this witness had asked Doctor whether the patient was fit and conscious, upon which, he was informed by the Doctor that Laxmi was in a fit and conscious state and her statement can be recorded.

28. PW. 5- Nitin Chougule, therefore, recorded dying declaration of Laxmi. Before recording her statement, Doctor had endorsed that Laxmi was fit and conscious. She had stated before this witness as to how the appellant used to beat and ill-treat her under the influence of liquor as well as insisting for bringing Rs.10,000/- from her mother and as to how the appellant poured kerosene on her person on that day after beating her and then set her on fire. He further testified that Laxmi had stated before him that neighbours extinguished the fire and along with her maternal uncle was brought to the hospital. **Exhibit 38** is the first dying declaration, on the basis of which, a crime was registered against the appellant at Sadar Bazar Police Station, Solapur.

29. A perusal of **Exhibit 38** indicates that at **Exhibit 52** the medical officer had certified that Laxmi was conscious and able to give statement. It commenced at 2.50 pm and concluded at 16.10 hours. It can be seen that it took approximately one hour and twenty minutes for this witness to record the first dying declaration of Laxmi. Similar suggestion had been given to P.W.5- Nitin Chougule that it was an accident due to bursting of the stove while cooking which he denied.

30. Merely because this witness did not attest the thumb impression of Laxmi by signing as “*Dastur*” would not *ipso facto* mean that statement of Laxmi was not genuine and faithful, more particularly in the light of the fact that there is nothing on record to suggest that either Laxmi was tutored by her mother or other relatives or for that matter, she was not well oriented with time, place and person.

31. Second dying declaration (**Exhibit 35**) was recorded by P.W.4-Dayanand Mane. His evidence indicates that on 23rd June, 2013 at about 1.30 p.m., he received a phone call from the Police Station for recording a dying declaration. He went to the burn ward of the Civil Hospital where Doctor showed him the patient on his request. P.W.4-Dayanand Mane thereafter asked all the relatives of the patient to go out of the room. At his request, Doctor had examined the patient and endorsed that she was in the fit state to give a statement.

32. Evidence of P.W.4-Dayanand Mane further indicates that he started recording statement of Laxmi by first asking her name, address and age. Laxmi had answered all his questions. She had stated that her husband had beaten her because her mother did not return money to him. She had stated before him that her husband poured kerosene on her person from a stove and set her on fire. He thereafter ran away. The neighbours had extinguished fire. Her husband and Dashrath had brought her to the hospital. Dying declaration came to be recorded by this witness in verbatim and thereafter he had obtained her thumb impression. He testified that Laxmi was again examined by the Doctor and put an endorsement that she was conscious at the time of recording her declaration. Thereafter, this witness put his signature and handed over the dying declaration to the Police. **Exhibit 35** is the dying declaration and **Exhibit 55** is the endorsement given by the Medical Officer which reads that the patient was conscious, oriented and was in a position to give a valid statement. **Exhibit 56** further fortifies the fact that the patient was conscious and oriented through out the statement.

33. There is no effective cross-examination of this witness barring one suggestion that this witness could not obtain thumb impression of Laxmi as her fingers were burnt, which he categorically denied. Here also, only because the witness had not written the name of the declarant beneath her thumb impression would not render the otherwise credible, trustworthy and genuine dying declaration of the deceased otiose.

34. We are satisfied that both dying declarations are true, voluntary and un-influenced by any extraneous consideration. The learned Additional Sessions Judge has, therefore, rightly placed implicit reliance upon the same while holding the appellant guilty of the offences with which he has been charged. As a matter of fact, conviction of the appellant could have been based upon the uncorroborated declaration of the deceased as corroboration is not a rule of law but only a rule of prudence.

35. There are catena of decisions on that aspect. We shall deal with a few of them hereinafter. There is no effective cross-examination of this witness and we do not find any reason to disbelieve testimony of P.W.4 – Dayanand Mane who had taken all the precautions while recording dying declaration of Laxmi.

36. Before analyzing the evidence of two medical officers namely, P.W.6–Dr. Amruta Waghavkar and P.W.7–Dr Priyanka Alwekar who had examined Laxmi before recording her dying declaration, it would be expedient to look at the autopsy finding, especially column No.17, **Exhibit 42**. Column No.17 depicts the

following surface wounds and injuries;

“Superficial to deep burn injuries to following
body parts with total percentage of burn

(1)Head, Face, Neck	-	8%
(2)Chest, Abdomen	-	18%
(3)Back	-	17%
(4)both upper limbs	-	(8+8) 16%
(5)both lower limbs	-	(18+16) 34%
(6)Perineum	-	1%

Total: 95%

peeling of superficial epithelium at
places all over body.

37. Indubitably, Laxmi had sustained 95% of burns and as per the opinion of an autopsy surgeon, cause of death was due to burn injuries. There is no suggestion given either to P.W.6- Dr. Amruta Waghavkar or P.W.7-Dr. Priyanka Alwekar that due to burns to the finger tips it was difficult to obtain her thumb impression. It can be seen from the autopsy findings “peeling of superficial epithelium all over the body” which necessarily means the epidermal burns were somewhere between the first and second degree as per Chapter 22 of Modi’s jurisprudence. In case of first degree epidermal burns, according to Modi’s jurisprudence, there is erythema marked with superficial inflammation which usually disappears in a few hours, but may last for several days, when the upper layer of the skin peels off but leaves no scars. It is nobody’s case that the ridges over the finger tips due to the burn injuries

have been permanently diminished. Since the epidermal burns were somewhere between the first and second degree, there is absolutely no reason to suspect that thumb impressions of Laxmi obtained over her dying declarations were suspicious.

38. PW.6- Dr. Amruta Waghavkar was on duty as a medical officer in casualty ward of Civil Hospital, Solapur on 23rd June, 2013. Her duty hours were from 2.00 p.m to 9.00 pm. Laxmi was admitted in her ward at about 2.30 p.m. She testified that the Police wanted to record statement of Laxmi and, therefore, they sought her opinion about her condition.

39. PW.6-Dr. Amruta Waghavkar, therefore, examined the patient and opined that she was conscious and was in a position to give a statement. She had put her endorsement which is proved at **Exhibit 52** as already stated hereinabove. It has come in her evidence that she was present throughout when statement of Laxmi was recorded by the Police Officer. After recording the statement, it was read over to her and thereafter patient was again examined by her. She found her conscious and fit.

40. A futile attempt has been made to discredit her version in the cross-examination by the defence by suggesting that to minimize pains in case of burn injuries, sedatives such as Morphine and Pathadine are administered. Answer to this suggestion was that the Doctor or Surgeon who treated the patient can be in a better position to give his opinion on that point. PW.6- Dr. Amruta Waghavkar clarified that she did not give any

injunction or other treatment to Laxmi. The fact that she examined Laxmi before and after recording her statement and certified about her fitness has been reiterated in the cross-examination also. There is no question of disbelieving the evidence of this witness.

41. Similarly, P.W.7-Dr. Priyanka Alwekar also spoke in tune with P.W.6- Dr. Amruta Waghavkar as she had examined Laxmi on the second occasion on the same day before the second dying declaration was recorded by P.W.4-Dayanand Mane, Special Judicial Magistrate.

42. P.W.7- Dr. Priyanka Alwekar deposed that after examining Laxmi she opined that she was in fit and conscious state to give a statement and accordingly made her endorsement which is proved at Exhibit 55. She, too, was present throughout the recording of dying declaration of Laxmi and had also examined her after it was over. A certificate to that effect with her signature is proved at Exhibit 56.

43. Even, in her cross-examination, similar suggestion as regards administration of sedative was given to which it was answered that she was unaware of the treatment given by the regular Doctor. The witness admits that due to administration of Morphine and Pathadine etc, the patient experiences drowsiness and sometimes may become unconscious. However, it has not been specifically suggested that in case of Laxmi, it had so happened. She denied the suggestion that Laxmi was not conscious at the time of recording her statement.

44. It is explicit from the evidence of P.W.6- Dr. Amruta Waghavkar and P.W.7- Dr. Priyanka Alwekar, *vis-a-vis* the dying declarations of Laxmi that all the necessary precautions and safeguards as enunciated by the Apex Court in several decisions right from the decision in case of **Khushal Rao Vs State of Bombay, AIR 1958 SC, 22** till the latest one in case of **Satpal Vs. State of Haryana, AIR Online 2021 SC 114** have been adhered to. The law on that aspect is no more *res integra*. It is stated that the statement made by a person who is in danger of losing his life, as to the cause of his death or as to the transaction which resulted in his death, becomes relevant factor upon his death. It is said that such person is not expected to tell lies at such serious and solemn moment. At such a stage, a man is induced by the most powerful consideration to speak only the truth. In the given set of facts and circumstances, we do not find any reason as to why Laxmi would speak lie against the appellant. We are fortified in our view in light of the latest judgment of the Hon'ble Supreme Court in the case of **Satpal** (supra). It would be apposite to extract paragraphs 13 to 16 which read thus;

“13. In this case, it is to be noticed that, at first instance, on coming to know that the deceased, Pooja Rani, was admitted to hospital with the burn injuries, as informed by the police, the ASI went to the hospital along with other police officials. When it was noticed that the deceased has suffered 90 per cent injuries and was in a fit condition to make a declaration, he sent a request to the concerned

Magistrate, upon which, the Judicial Magistrate, First Class, Yamuna Nagar, Jagadhri, recorded the statement of the deceased, Pooja Rani, which was exhibited as Ex-PL. In her dying declaration, she has clearly stated that the appellant has poured Kerosene Oil on her and set her ablaze. Though, the family members of the appellant were also chargesheeted, they were subsequently discharged vide Order dated 12.08.2008. On information given to the parents of the deceased, they have come to hospital. The deceased, Pooja Rani was admitted in the hospital on 20.03.2008 and ultimately, succumbed to injuries on 27.03.2008. It is also clear from the material evidence, placed before this Court, that though the family members of the deceased were in the hospital, they were sent out, when the dying declaration was recorded by the Magistrate, who was also examined on behalf of the prosecution as PW-16.

14. *If we look at dying declaration, recorded by the Magistrate, it looks natural and no reason to disbelieve the same. In addition to the dying declaration, the statements of PW-5 and PW-6, who are mother and maternal uncle respectively of the deceased, corroborate the case of prosecution. It is clear from their statements that the deceased was tortured at the hands of the appellant and his family*

members. The Magistrate, in her deposition, has clearly stated that the relatives of deceased, Pooja Rani, were not there at the time of recording dying declaration of the deceased.

15. Further, it is also relevant to notice here, though the appellant has stated in his statement, recorded under Section 313 of Cr.P.C., that many persons from the neighbourhood came to the house of the appellant at the time of incident, no one was examined on his behalf.

16. If the dying declaration, recorded by PW-16, is considered along with the depositions of PW-5, PW-6 and other witnesses, who were examined on behalf of the prosecution, it clearly establishes the guilt of the appellant, beyond reasonable doubt, as such, we find no merit in any of the contentions, advanced by the learned counsel for the appellant. Further, merely because the parents and other relatives of the deceased were present in the Hospital, when the statement of the deceased was recorded, it cannot be said that the said statement was a tutored one. It is quite natural that when such an incident happens, the parents and other relatives try to reach the hospital immediately. Merely because they were in the hospital, the same is no ground to disbelieve the dying declaration,

rerecorded by the Magistrate, who was examined as PW-16”.

45. The facts are more or less identical to the case in hand. We have, therefore, no hesitation to accept both the dying declarations as genuine and truthful. It is crystal clear that Laxmi was not only conscious and fit but well oriented with time, place and person and had aptly given vivid account of the incident as to how the appellant used to torture and ill-treat her for an amount of Rs.10,000/- and on the fateful day i.e on 23rd June, 2013, how he had beaten her and then doused her with kerosene from the stove and set her ablaze. There is nothing to construe that either Laxmi was tutored by her relatives or there was delay in recording her statement. The two dying declarations of Laxmi recorded by P.W.4- Dayanand Mane and P.W.5-Nitin Chougule, if juxtaposed with that of the evidence of P.W.2-Kasturi Mane and P.W.3-Kiran Khandewale, are found to be consistent, cogent and trustworthy and inspire full confidence. It has been established beyond doubt that the appellant did an act with an intention and knowledge that by his act he would cause death of Laxmi.

46. In a recent decision reported in **AIR 2020 Supreme Court, 476 (Purshottam Chopra and another v. State (Govt of NCT Delhi)**, after taking survey of several similar decisions, the Hon’ble Supreme Court reiterated the salient features to be taken into consideration while appreciating the dying declarations and their evidentiary values. It would be apposite to refer to paragraph 21 of the judgment which is extracted below;

“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:-

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

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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.

vii) 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.

viii) 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.

47. Applying the principles laid down by the Hon'ble Supreme Court in the given set of facts, we are fully convinced that both the dying declarations passed the test of all the principles laid down hereinabove.

48. In the light of the aforesaid discussions of facts, circumstances and evidence, we do not find any reason to interfere with the impugned judgment and order of conviction rendered by the Additional Sessions Judge, Solapur.

49. Consequently, the appeal is devoid of merits and hence, stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]

[SMT. SADHANA S. JADHAV, J.]