

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 26 OF 2003

State of Maharashtra.	...	Appellant.
V/s.		
Smt.Sanjivani Shashikant Sasawade,		
Age 47 years, Occu. Household,		
R/o Mhada Colony, Bhore,		
Tal. Bhore, Dist. Pune.	...	Respondent.

Mrs.M.M.Deshmukh, APP for the Appellant- State.

Mr.Rahul Thakur with Mr.Sanket Thakur for the Respondent.

CORAM :	NITIN JAMDAR AND G.A. SANAP, JJ.
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RESERVED ON :	20 September 2021.
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PRONOUNCED ON :	29 October 2021.
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JUDGMENT : (Per Nitin Jamdar, J.)

The State of Maharashtra has filed this appeal against acquittal challenging the judgment and order passed by the Additional Sessions Judge, Pune dated 30 July 2002 acquitting the Respondent of the offence punishable under section 498A and section 302 of the Indian Penal Code. The Respondent was charged

with an offence punishable under section 302 read with section 498A for subjecting her daughter-in-law, deceased Archana, who was 18 years old, to cruelty and committing her murder by setting her on fire after pouring kerosene.

2. The prosecution case, in brief, is as follows:

(i) Rahul Sasawade is the son of the Respondent- accused. The deceased - Archana, was married to Rahul Sasawade on 1 December 2000. After the marriage, she was cohabiting along with her husband and the Respondent in her matrimonial house at MHADA Colony, Bhore. The deceased had been to her parents' house at village Kashidwadi, taluka- Phaltan, district- Satara for the Sankrant festival. During the period of her stay at her parents' house, she had received a chit from the post. The deceased had kept the chit in her purse. After the Makar-Sankrant festival, she went back for cohabitation to her matrimonial house. During the period of the stay of the deceased in her matrimonial house, the Respondent found a chit in her purse. On finding the chit, the Respondent suspected Archana's character and started ill-treating to her. The Respondent was compelling the Archana to disclose the author of the chit suspecting it to be a love letter.

(ii) On 16 April 2001, at about 7.00 p.m., after a quarrel, the Respondent poured kerosene on Archana and set her on fire. After

pouring the kerosene, the Respondent went out of the house to attend the telephonic call of her relative from Pandharpur in her neighbour's house. On hearing the cries of the deceased, the persons in the vicinity gathered and extinguished her flames. Archana was taken for medical treatment to the Rural Hospital, Bhore. After that, she was taken for medical treatment to Sassoon Hospital, Pune. She sustained superficial to deep burn injuries. She was admitted to the Sassoon Hospital, Pune, at about 10.20 p.m. on 16 April 2001. The police attached to the Sassoon Police Chowky gave a requisition letter to the Special Judicial Magistrate, P.W.4- Adsul, for recording the dying declaration of the deceased. Accordingly, the Special Judicial Magistrate recorded the dying declaration of the deceased on 17 April 2001 between 00.15 to 00.55 hrs. in the presence of the Medical Officer, P.W.7- Dr.Hankare.

(iii) The Police Inspector ,the investigation officer, visited Sassoon Hospital, Pune on 17 April 2001 at about 2.00 a.m. (midnight). He recorded the Archana's dying declaration at about 2.15 a.m. in the presence of P.W.7- Dr.Hankare, Medical Officer. Based on the dying declaration recorded by him, Crime bearing No.67/2001 was registered with Bhore Police Station at about 4.15 a.m. The deceased made an oral dying declaration to her mother with regard to her cause of burn injuries in the Sassoon Hospital, Pune.

(iv) P.W.9- Police Inspector Dange (the investigating officer) investigated the crime. During the investigation, he prepared the spot panchanama dated 17 April 2001, seizing the pieces of burnt clothes, a can containing kerosene and other articles. He also seized the sari and blouse of the Respondent under the panchanama dated 17 April 2001. He also seized the chit produced by Shashikant Jagannath Sasawade, the Respondent's husband under the panchanama dated 17 April 2001.

(v) On 19 April 2001, the Archana succumbed to burn injuries. After that, Section 302 of the Indian Penal Code was added. The seized articles were sent for analysis to the Chemical Analyzer on 30 April 2001. After complying with the necessary formalities, the Investigating Officer submitted the charge sheet in the court of Judicial Magistrate, First Class, Bhore on 30 June 2001. The learned Judicial Magistrate, by order dated 20 August 2001, committed the case to the Court of Sessions, Pune.

(vi) Charge vide Exh.13 was framed for the offences punishable under Sections 498-A, and 302 of IPC. The Respondent pleaded not guilty and claimed to be tried. Respondent denied the charge of murder. The defence of the Respondent, in short was, that Archana was always treated well. Archana was not ill-treated after finding a chit in her purse. Archana accidentally sustained burn injuries on her person in the kitchen. On hearing the cries for

help, Respondent, along with other persons, extinguished her flames by pouring water on her person. The Respondent did not adduce any evidence in her defense.

3. The learned Additional Sessions Judge, after perusing the evidence on record and the arguments, concluded that the Prosecution has not proved that the Respondent subjected deceased Archana to cruelty. The learned Judge also concluded that the Prosecution has failed to prove that the Respondent committed the murder of deceased Archana by pouring kerosene on her and setting her on fire. Accordingly, the learned Additional Sessions Judge acquitted the Respondent of the offences charged.

4. We have heard Mrs. M. M. Deshmukh, APP for the Appellant, who has very ably put up the case of the State and Mr. Rahul Thakur for the Respondent.

5. Before we proceed further to assess the evidence we have to be mindful of the parameters of powers of the High Court in an appeal against acquittal. In *Babu v. the State of Kerala*¹, the Supreme Court summarised the principles governing the scope of Appeal acquittal as follows. An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power

¹ (2010) 9 SCC 189

and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether, in arriving at a finding of fact, the trial court had failed to consider admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Unless there are good reasons for interference, interference in a routine manner where the other view is possible should be avoided. An order of acquittal should not be lightly interfered with even if the court believes that some evidence points out the finger towards the accused.

6. With these principles in mind, we will now narrate and evaluate the evidence on record to ascertain whether the case can be considered as an exceptional case and whether the order of the Sessions Court is perverse and whether the Appellant makes any case out to reverse the order of acquittal .

7. The Prosecution has examined nine witnesses in support

of its case. The panchanama dated 17 April 2001 seizing the chit is produced at Exh.30 through the evidence of P.W.1- Kisan. The chit is produced at Ex.31. P.W.4- Adsul, Special Judicial Magistrate, produced the requisition letter at Exh.37 and the dying declaration of the deceased at Exh.38. The dying declaration of the deceased recorded by P.W.9- Dange, the investigating officer in the form of F.I.R., is produced at Exh.44. The spot panchanama dated 17 April 2001 seizing the burnt pieces of clothes etc., is produced at Exh.40 through the evidence of P.W.5- Suresh. The panchanama seizing the clothes found on the Respondent's person is produced at Exh.42 through the evidence of P.W.6- Sadashiv. Postmortem notes are produced at Exh.48 through the evidence of P.W.8- Dr Belsare, the Medical Officer. Chemical Analyzer's report is produced at Exh.54 through the evidence of P.W.9- Dange.

8. The Prosecution witnesses can be grouped as follows: P.W.2- Rahul Tantak and P.W.3- Asha Tantak are the brother and mother of the deceased Archana. They have deposed as regards the cruelty meted out to deceased Archana. The second group is of P.W.1- Shete, panch witness for panchanama of chit; P.W.5- Valadkar, panch witness for the spot panchanama; and P.W.6- Surve, panch witness for seizure panchanama of clothes. P.W.9- Dange is the investigating officer. The next group of witnesses is in respect of dying declaration, i.e. P.W.4- Kantilal Adsul, Special Judicial Magistrate who recorded the dying declaration of Archana (Exh.38);

P.W.7- Dr Prakash Hankare who examined Archana and who gave the endorsement on the dying declaration; and P.W.9- Dange, Police Inspector who recorded the FIR/Dying Declaration.

9. P.W.2- Rahul, brother of the deceased Archana, 16 years old deposed that Archana was married on 1 December 2000. On 4 April 2001, he had gone to visit Archana at Bhor at her matrimonial house. He stayed there for a day. On the next day, Archana had taken him to the terrace when she told him that the Respondent-mother-in-law was beating and ill-treating her and he should inform the same to her parents. P.W.2 deposed that upon return, he informed his parents about the ill-treatment of his sister. He deposed that on 16 April 2001, the Police came to their house and informed that the Respondent had set Archana on fire, and Archana was admitted to the Sassoon Hospital. P.W.3- Asha, mother of the deceased, deposed that Archana's husband was in service with one company at Katraj, and he was coming to his workplace from his place of residence at Bhor where Archana was staying with him. She deposed that on Makar Sankrant day, Archana was brought to her house by P.W.2. She was taken back after Makar Sankrant. One month after that, a phone call was received from the husband of Archana to their neighbour's house. At that time, Archana's husband called P.W.3 and her husband to Bhor. She deposed that when her husband went to Bhor, Archana's husband informed him that there was one chit found from the Archana's purse and that he

may consider not sending Archana to her parent's house for a year. She deposed that she received a message from the Respondent, and then she had a talk with her on the telephone. During the conversation, the Respondent suspected the character of Archana. After that, P.W.3 sent P.W.2 to the matrimonial house of Archana. P.W.3 further deposed that her son, P.W.2, told her about the ill-treatment to Archana by the Respondent and her husband. P.W.3 deposed that on 16 April 2001, she came to know from the Police that Archana was admitted with burn injuries at Sassoon Hospital. When she went there, she found Archana in serious condition. P.W.3 deposed that in Sassoon Hospital, Archana narrated that Respondent poured kerosene on her and set her on fire. This is the evidence led by the Prosecution regarding the ill-treatment of deceased Archana. One of the reasons being a chit found in the purse of deceased Archana. P.W.1- Shete is the panch witness for the seizure of the chit at Exh.31. The panchanama is at Exh.30.

10. P.W.5- Suresh Valadkar is the panch witness for the spot panchanama (Exh.30). The spot panchanama shows that spot was shown by Mammad Nalband. The spot was on the first floor of MHADA Colony, where there was a gallery of 3 ft. x 30 ft. In front of the room, there were pieces of burn clothes. The room was locked, and inside, it was 11 ft. x 9 ft., where there were household articles. In the room, there were pieces of burned clothes. There was an area to go to the inner room through an open passage which

had a toilet and kitchen. Pieces of burned slippers lying in front of the kitchen and toilet, and there was a rock oil can lying in the passage. P.W.5 deposed accordingly. The inquest panchanama Exh.58 was admitted by the Prosecution. It shows that the face, neck, abdomen and legs of the deceased were burned. An opinion was rendered that cause could be by burn injuries. P.W.8- Dr Belsare, who conducted a post-mortem, recorded that deceased Archana had 64% burn injuries. He opined that the cause of death was shock due to burn. Therefore, the prosecution case that Archana succumbed to burn injuries is established and is not seriously disputed before us by the Respondent.

11. In the defence of the Respondent under section 313, the fact that Archana was burnt in the house is not disputed. In fact, the defence is that when the Respondent had gone down by staircase to attend a phone call, she saw the deceased on fire whose flames were extinguished by pouring water on her. Therefore, the learned APP for the State submitted before us the reasons for and how deceased Archana received the burn injuries. The Prosecution has relied upon the dying declarations given by deceased Archana.

12. Regarding the first dying declaration by deceased Archana, P.W.9- Netaji Dange, PI deposed that he had reached Sassoon Hospital upon information that Archana was admitted in the hospital. He reached Sassoon Hospital around 2.15 am and recorded

the statement of Archana in the presence of the Medical Officer of Sassoon Hospital. The said statement/ dying declaration is at Exh.44. P.W.9- Dange sent Exh.44 for registering the same at Bhore Police Station. Accordingly, Crime No.67/2001 was registered based on the said statement. In the statement at Exh.44, Archana gave a detailed version. She stated that she was married on 1 December. She stated that she was staying with her husband, mother-in-law, the accused and the father-in-law. She gave a description of what profession her father is and which job her husband does. She stated that she was staying at Bhore for 16 days after the marriage. After that, she went back to her parent's house, where she received a chit by post. The chit by post had no name of the sender or the receiver, which chit she kept in her purse. When she came back to her marital home and when she was cleaning her purse, the chit fell, which the Respondent read chit over, and upon reading the chit, she started harassing her and physically torturing her. She stated that the Respondent informed her son, i.e. the husband of the deceased, who also enquired about the chit and when she explained that she does not know, his misapprehension was removed. Then she stated that on 15 April 2001, she had gone out to a temple. She returned at 8.00 in the night. After dinner, when she was lying on the bed, she went to sleep, and her husband was sleeping outside, and when the Respondent and father-in-law of the deceased came back, Respondent woke her up and beat her with slippers, and whole night the quarrel went on. The next day, the

accused again started taunting her when Archana told the accused in front of her father-in-law that she would behave well and not talk back to anyone. In the evening, Respondent taunted Archana on the financial status, and while such bickering was going on, somebody called the Respondent from downstairs, stating that she had a phone call from Pandharpur. At that time, the Respondent poured kerosene on her and threw a lit matchstick on her. The accused took the two children of the sister-in-law of the deceased out. Archana stated that she was burning and started shouting. That time, one of the children saw her burning. Archana stated that when the accused came up, she said, 'what you have done'. The people gathered and poured water on her and extinguished the fire. The accused was telling the persons, who had gathered, that Archana had set herself on fire. Thereafter she was removed to Sassoon Hospital.

13. P.W.4- Kantilal, Special Judicial Magistrate, recorded the dying declaration of Archana at Exh.38. He deposed that on 16 April 2001, he received a requisition at around 11.15 pm for recording the statement. He went to Sassoon Hospital and asked the Medical Officer to examine and report about giving a statement. Accordingly, the Medical Officer examined the patient and observed that Archana was conscious. He stated that the Medical Officer made an endorsement to that effect at 12.14 am in his presence. P.W.4 deposed that he enquired from Archana about her age, occupation of Respondent, to which Archana gave answers. He

asked Archana whether she was conscious, and she said that she was conscious but was unable to see. At that time, P.W.4 disclosed his identity as Special Judicial Magistrate. P.W.4 took down her statement. He deposed that her both hands were burnt and, therefore, he obtained the impression of the big toe of her left foot. He deposed that he attested the said impression and signed below it. The statement was recorded on 17 April 2001 between 12.15 to 12.55 am. The Medical Officer made an endorsement accordingly. The said statement/ dying declaration is at Exh.38 and is in question and answer format. In this dying declaration, to the question as to how she got burnt, Archana referred to the chit and narrated the incidents that happened on the date before the incident, the following day and the actual incident.

14. Dr Prakash Hankare working as Resident Doctor in Sassoon Hospital, was examined as P.W.7. He deposed that Archana was admitted at 12.20 pm on 16 April 2001. Archana gave a history of her mother-in-law, the accused calling her inside the room, pouring kerosene on her and throwing lit matchstick on her. He deposed that Archana was in the hospital till 19 April 2001, and she expired at about 12.50 pm on 19 April 2001. Upon examination, he found that Archana had received 64% burn injuries. He deposed that the dying declaration at Exh.38 was recorded after her examination. He stated that Archana was well oriented and conscious. He also referred to his endorsement on Exh.4.

15. P.W.8- Dr Sudhendu Belsare was working as Medical Officer in Sassoon Hospital. He conducted a postmortem on the dead body and found 64% burn injuries. The burn injuries were: (i) head, neck and face- 9%; (ii) chest and abdomen- 18%; (iii) back- 9%; (iv) upper limb- 18%; and left lower limb- 10%. He opined that the cause of death was shock due to burn.

16. This is the primary evidence relied upon by the Prosecution against the Respondent.

17. Two aspects arise in this appeal upon the arguments of the counsel regarding the genesis of the incident, i.e. chit found in the purse of the deceased and the consequent ill-treatment as a motive for the crime, and the second is the dying declarations. No eye witness to the incident is examined.

18. The defence of the Respondent is as follows. The chit seized vide Exh.31 was not a chit found in the purse of deceased Archana. On her inquiry deceased disclosed that she received a chit from her friend Vidula Deshpande. Respondent herself, along with her husband, had been to Vidula Deshpande at Phaltan for enquiry. However, she refused to send a chit to the deceased. Thereafter Respondent stopped enquiring with the deceased. Thereafter she, along with the deceased, had been to Pandharpur on 28 March 2001

and stayed there for eight days. On the previous day of the incident, she had been to Saswad temple of Kanifnath. On the same day, she had been with her husband for the blessing of God of Sidhatek. Five six days before the incident, the children of her elder daughter stayed in her house. On the previous night of the incident, they had taken meal along with the deceased. At the time of the incident, she was sitting in the gallery along with her grandchildren. The deceased was in the kitchen room. The daughter of Sunita Shinde called her to attend to a telephone call from Pandharpur. She got down from the staircase along with her grandchildren to proceed to Sunita Shinde's house. She had a telephonic talk with her relative from Pandharpur. That time the daughter of Sunita Shinde saw fire in her gallery and shouted. After that, she stopped talking on the phone and rushed towards her house. Archana was shouting for help. On hearing her shouts, persons gathered. They all extinguished her flames by pouring water on her. She took the deceased in a rickshaw to Bhore hospital. She was in Bhore hospital for 30 to 40 minutes. She took the deceased along with her relatives to Sassoon Hospital in an ambulance. At that time, the Police of Bhore, including P.H.C. Nanajkar, were present in the ambulance. P.H.C. Nanajkar is the relative of the deceased, and at his instance, a false case is filed against the Respondent.

19. The contents of the chit, which are in Marathi, is reproduced by the learned Additional Sessions Judge in the

judgment in paragraph-12. The learned APP contended that the chit was received is admitted even by the Respondent in the statement under section 313 therefore this aspect is established. The learned APP submitted that it is clear from the evidence of P.W.2 and P.W.3 that Archana was being harassed by the Respondent accused. The reason was that the chit was found in her purse. The learned counsel for the Respondent contended that it is not conceivable that a chit would be received by post without any address of the sender, the name of the sender and the receiver; otherwise, the chit by post would be returned. The learned counsel for the Respondent submitted that the evidence led by the Prosecution was on a closed episode, and the misapprehension harboured by the Respondent was removed. The learned counsel also submitted that P.W.1- Kisan Shete, Panch, for the seizure of the chit was a habitual panch having a tea stall in front of Bhore Police Station and that he had not read the chit and could not tell the contents.

20. The P.W.2 has deposed about Archana telling him on the terrace on 6 April 2001 that the Respondent was ill-treating her. He does not refer to any chit. He admitted in the cross-examination that he came to know from his parents about ill-treatment on his sister upon finding the chit. He deposed that one Vidula Deshpande, who was a friend of Archana, gave her the chit. He also deposed that Archana disclosed at her parents' house that she

received a chit from one Vidula Deshpande from Phaltan. He deposed that his parents had gone to meet Vidula Deshpande at Phaltan. His admission in the cross-examination that Archana had received chit from Vidula Deshpande is in variance with the version of Archana in the dying declaration where she has stated that the chit was received by post without the name of the sender or the receiver. P.W.3- Asha, mother of the deceased Archana, referred to the chit in her deposition, stating that Archana's husband informed of finding a chit from the purse of Archana. She also referred to a telephonic conversation with the Respondent taking suspicion on the character of Archana. In her cross-examination, P.W.3 has stated that Archana told her that under the pressure of Respondent, the chit was sent by Vidula Deshpande. This again is entirely a different story than the version in the dying declaration. P.W.3, in the cross-examination, admitted that her husband had gone to the house of Vidula Deshpande. Vidula Deshpande told her husband that she did not send the chit and that her husband informed P.W.3 that Vidula Deshpande had denied sending a chit to Archana. She admitted in paragraph-7 that her husband informed her that he had gone to the matrimonial house of Archana, and the misunderstanding on account of chit was removed. In the defence taken by the Respondent, the Respondent has also stated that she had made inquiries with Vidula Deshpande, and once she refused that she had sent the chit, she stopped making inquiries about the same. The genesis of the prosecution case is that the Respondent was forcing

Archana to disclose the identity of the one who sent the chit. However, the prosecution evidence itself shows that the inquiries were made. Since Vidula Deshpande denied authorship of the chit, the matter ended there.

21. The chit, from the reading of it, shows that it is a piece of romantic prose not addressed to anyone. The bare reading of the context of the chit does not refer to Archana in any manner, and nothing specific was mentioned except general poetic words. How the chit was received is also stated differently by P.W.2 and P.W.3, brother and mother of the deceased than the dying declaration of the deceased. The dying declaration does not state that the chit was received from Vidula Deshpande but from some unknown person and by post. In contrast, P.W.2 and P.W.3 specifically state that Archana told them that the chit was received from Vidula Deshpande. Thus, if on such evidence the case based on receipt of chit as a foundation for harassment and the motive is disbelieved by the learned Additional Sessions Judge, we find no perversity in the same. There is no other reason brought on record by the Prosecution as to why the Respondent would harass Archana and go to the extent of setting her on fire. That finding of the learned Additional Sessions Judge cannot be reversed.

22. As regards the actual incident, the Prosecution has not examined any eye witnesses. The spot panchanama Exh.40 shows

that the gallery in front of the first-floor room No.19 had pieces of burnt clothes. The learned counsel for the Respondent sought to contend that after the incident, the room was closed immediately and yet P.W.5- Vadalkar, panch witness, admitted that he did not get any kerosene smell at the time of spot panchanama carried out immediately at 7.00 a.m. on 17 April 2001. The learned APP pointed out that the spot panchanama and the evidence of P.W.5 show that the incident took place in the balcony. P.W.9- Dange, PI, has stated that one Mammad Nalband showed the spot of the incident, and it was Mammad Nalband who poured water on Archana. Mammad Nalband took Archana to the hospital. He stated that he had recorded the rickshaw driver's statement and a boy with him in the rickshaw. The learned counsel for the Respondent submitted that the boy who accompanied in the rickshaw is referred to in the dying declaration is one of the children of sister-in-law of the deceased who was in the room when the Respondent alleged to have poured kerosene. Neither Mammad Nalband nor the boy in the rickshaw and Sachin Arun Shete, the rickshaw driver, were examined. P.W.9- Dange admitted that the statement of one Shila Karmarkar at Pandharpur was recorded. He admitted that it transpired during the investigation that the Respondent and Archana had been to Pandharpur on 28 March 2001 and returned back on 3 April 2001. He also admitted that Shila Karmarkar had called the neighbour Sunita Shinde at around 7.00 to 7.15 pm on 16 April 2001. That the factum of the phone call from Pandharpur is

mentioned both in the dying declaration and in defence of the Respondent and thus stand established.

23. Therefore, the dying declaration of the deceased Archana is the main thrust of the prosecution case that we now evaluate. The learned Additional Sessions Judge has disbelieved the dying declarations. We have to examine from the evidence on records whether this finding can be called perverse.

24. There are two dying declarations relied upon by the Prosecution. The dying declaration at Exh.38 is proved by P.W.4- Kantilal Adsul, Special Executive Magistrate and the dying declaration at Exh.44 are proved by P.W.9- Dange, PI and the evidence of P.W.7- Dr Hankare, who endorsed both the dying declarations.

25. The learned Additional Sessions Judge has discarded the dying declaration recorded by the Investigating/Police Officer (PW-9) in toto. Before recording the dying declaration by the Investigating Officer (PW-9) Special Judicial Magistrate (PW-4) had recorded the dying declaration of the deceased on 17.04.2021 at 12.15 AM in presence of the Dr. Hankare, Medical Officer (PW-7). The learned Additional Sessions Judge for the reasons recorded in the judgment found this dying declaration unreliable. The learned Additional Sessions Judge recorded a finding that the evidence of

Special Judicial Magistrate (PW-4), the evidence of Dr. Hankare (PW-7) and the contemporaneous record do not inspire confidence.

26. Learned APP for the appellant/State took us through the evidence of Special Judicial Magistrate (PW-4), Dr. Hankare (PW-7) and the documentary evidence. Learned APP submitted that the evidence is credible and therefore, ought to have been accepted by the learned Additional Sessions Judge. The learned APP for the appellant/State submitted that the reasons recorded by the learned Additional Sessions Judge cannot be sustained in the backdrop of the concrete and cogent evidence. Learned APP has relied on the decisions of the Supreme Court in *Koli Chunilal Savji v. State of Gujrat*² and *Laxman v. State of Maharashtra*³.

27. It is a settled legal position that conviction can be based on the sole piece of dying declaration. However, before making the dying declaration as the sole base of conviction, the dying declaration must be found to be voluntary, truthful and out of the shadow of doubt. The evidence of Special Judicial Magistrate (PW-4) and the evidence of Medical Officer (PW-7) and the contemporaneous record would be relevant to appreciate the submissions.

28. Learned Advocate for the accused/respondent submitted that the contemporaneous record maintained by Special Judicial

² (1999) 9 SCC 562

³ (2002) 6 SCC 710

Magistrate (PW-4) and Dr. Hankare (PW-7) is contrary to their oral testimony. In this case, considering the fact that the deceased had sustained 64% burn injuries, it was necessary to prove beyond reasonable doubt that she was conscious, fully oriented and in a position to speak. On this point learned Additional Sessions Judge disbelieved the evidence of Special Judicial Magistrate (PW-4) and Dr. Hankare (PW-7).

29. In our opinion, a fresh look at the evidence would show that the learned Additional Sessions Judge has not committed any error while discarding the evidence of Special Judicial Magistrate (PW-4), Dr. Hankare (PW-7) and the dying declaration. The incident occurred on 16.04.2001 at 7.00 PM. The deceased was initially carried in the injured/burnt condition to Government Hospital at Bhor. She was treated in the said hospital and after preliminary treatment, she was shifted to Sassoon General Hospital, Pune. The medical treatment papers of the deceased from Bhor Hospital were neither obtained nor produced in the trial. Therefore, there is no concrete evidence to show that deceased was not administered pain killer injection or/drug at Bhor Hospital. Considering the 64% burn injuries sustained by the deceased on vital parts of the body, she must in pain and agony. Ex.46 is the M.L.C. papers of the treatment given to the deceased at Sassoon General Hospital, Pune. She was admitted at 10.20 PM on 16.04.2001. At the time of admission, it was specifically recorded that the condition

of the deceased was very critical. In this background, it would be necessary to see evidence of Dr. Hankare (PW-7). He has deposed that he examined the deceased for the first time at 10.30 PM in presence of Special Judicial Magistrate (PW-4) and on the request of (PW-4) certified that the deceased was conscious well oriented and in a position to speak. In his cross examination, he has stated that no injections were given to the patient and he informed this fact to the Special Judicial Magistrate (PW-4). He has further admitted that in his endorsements made on the dying declaration before recording and after recording of the same, about mental condition of the deceased. It appears that this answer seems to have been given by Dr. Hankare (PW-7) to justify his case that the deceased was fully oriented and in a position to speak. Perusal of the medical case papers would show that immediately on admission of the deceased at 10.00 PM the treatment was started on 16.04.2001. Page No.7 of the case paper would show that treating medical staff had administered four injections to the deceased. This record is contrary to the statement made by Medical Officer (PW-7). Medical Officer (PW-7) was expected to state categorically on being confronted in his cross examination that none of the injections administered to the deceased was pain killer. Medical Officer (PW-7) has also admitted that in the absence of record from Bhore Hospital, he would not be in a position to state whether any pain killer was administered to the deceased at Bhore Hospital before her admission in the Sassoon General Hospital, Pune. The administration of the pain killer can provide a relief to

such a patient as well as develop a drowsiness. In this background, it was necessary on the part of Medical Officer (PW-7) and Special Judicial Officer (PW-4) to categorically state that no pain killer or sedative injection was administered to the deceased. The subsequent entries from the case papers would show that the same injections were repeated in the further treatment. This fact clearly indicate that before recording the dying declaration the pain killer injection and other injections were administered to the deceased.

30. In the context of the above, it would be necessary to consider the evidence of Special Judicial Magistrate (PW-4) and Medical Officer (PW-7) on the point of obtaining the impression of great toe of the left leg of the deceased on the dying declaration. It has come on record in the evidence of Medical Officer (PW-7) that her left leg was completely burnt. Medical Officer (PW-7) has admitted that plantar surface of right foot of the deceased was intact. It was therefore, expected that Special Judicial Officer (PW-4) should have obtained the impression of the great toe of the right leg. In his evidence, he has stated that since both the hands were burnt, he obtained the impression of the great toe of left leg on the dying declaration. He has further stated in his cross-examination that on inquiry by him with the medical officer, the medical officer reported to him that the pain killer was not administered to the patient. Special Judicial Magistrate (PW-4) commenced the recording of the dying declaration at 0015 hours on 17.04.2001. The deceased was

admitted at 10 PM on 16.04.2001. Dr. Hankare (PW-7) examined patient for the first time at 10.30 PM. It is therefore, Crystal clear that treatment to patient was started immediately after admission at 10.00 PM. This evidence clearly goes contrary to the contemporaneous medical treatment record which clearly indicate that before commencing the recording of the dying declaration four injections were administered to the deceased.

31. The evidence of Special Judicial Magistrate (PW-4) and Dr. Hankare (PW-7) on the point of obtaining the impression of great toe of the left leg of the deceased on the dying declaration is another doubtful circumstance. Ex.58 is the Inquest Panchanama. Investigating Officer (PW-9) has stated in his cross examination that there was no mention that the ink was found on the great toe of left leg of the deceased. Assuming for the sake of argument that Police Officer had missed this aspect while drawing the inquest panchanama. But there is other corroborative evidence on this point. Medical Officer (PW-8) conducted the postmortem of the dead body. He has categorically admitted in his cross examination that he did not notice application of ink on any portion of the dead body while conducting the postmortem. No reason is given by the prosecution as to why the great toe of left leg was chosen when it was completely burnt. It has come on record plantar portion of the left leg was completely burnt. The right leg was not burnt. There is no plausible explanation on record to indicate as to why the impression

of the great toe of the right leg was not obtained. This in a view is another crucial circumstance creating doubt about the credibility of evidence of Special Judicial Magistrate (PW-4) and Medical Officer (PW-7). The doubt created on the basis of the above noted circumstances, in a view, is sufficient to grant the benefit of a doubt to the accused.

32. In our opinion, these factors reflect on the credibility, trustworthiness and voluntary nature of the dying declaration. The medical papers which is contemporaneous record maintained during the course of the treatment contradicts the oral testimony of the Special Judicial Magistrate (PW-4) and Medical Officer (PW-7).

33. It is further pertinent to mention that at 2.15 AM on 17.04.2001 the Investigating Officer recorded the statement of the deceased. The same has not been accepted as a credible piece of evidence by the learned Additional Sessions Judge. The reference to this statement is necessary because even at 2.15 AM the Investigating Officer in presence of the same medical officer (PW-7) obtained the impression of great toe of the left leg. In our opinion, this aspect also creates a doubt about the credibility and trustworthiness of the dying declaration recorded by Special Judicial Magistrate (PW-4) in presence of Medical Officer (PW-7).

34. Having considered the case in its totality and reevaluating

the evidence and consireding the law laid down by the Supreme Court in the case of *Koli Chunilal Savji v. State of Gujrat*⁴ and *Laxman v. State of Maharashtra*, we do not find that the learned Additional Session Judge has committed any perversity in rendering a finding of acquittal. The evidence on record relied upon by the prosecution is riddled with doubt . Therefore this is not an exceptional case having compelling circumstances nor the judgment under appeal is perverse, for us as, the appellate court, to interfere with the order of acquittal rendered in the year 2002.

35. The Appeal is dismissed.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)

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