

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1051 OF 2002

The State of Maharashtra

} Appellant
(Orig. Complainant)

VERSUS

1. Anna @ Pramod Dinkar Kulkarni,
Age : 40, Occu: Agriculture,
R/o. Akluj, Tal. Malshiras.

2. Yunnus Latif Mujawar,
Age : 48, Occu: Agriculture,
R/o. Barbainagar, Akluj,
Tal. Malshiras.

3. Paigamber Chandsaheb Mulani,
Age : 45, Occu: Agriculture,
R/o. Barbainagar, Akluj,
Tal. Malshiras.

} Respondents
(Orig Accused Nos. 1
to 3)

Mr H.J. Dedhia, APP for the Appellant – State.

Mr. Abhijit M. Patil i/by Mr. Vijay D. Patil for Respondents.

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

DATED : JANUARY 06, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the
IInd Additional Sessions Judge, Pandharpur in Sessions Case No.
22/2001, dated 06th March, 2002, whereby respondents herein (Original
Accused Nos. 1 to 3) were acquitted of the charges for committing

offences punishable under Sections 302, 452 read with 34 of the Indian Penal Code (for short “**IPC**”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. Learned APP vehemently submitted that in spite of oral as well as the written dying declarations clearly involving the complicity of the accused in the alleged crime, learned Trial Court disbelieved the version of prosecution and committed serious error in appreciation of the evidence. It is also the submission of learned APP that apart from dying declarations of the victim the oral testimony of other witnesses supports the case of prosecution. It is also submitted by learned APP that the accused persons themselves admitted their presence on the spot i.e. residential house of the victim on the day of incident. The other evidence in the form of medical evidence also support the case of prosecution as such, in spite of such clinching evidence against the accused persons the acquittal recorded by the learned Sessions Judge is a gross error and on this count the appeal needs to be allowed is the submission of learned APP.

3. Per contra, learned Counsel appearing for the Respondents

vehemently submitted that learned Trial Court appreciated the so called evidence in the form of oral and written dying declaration thoroughly and minutely and assigned strong legal grounds for not accepting evidence. No error was committed by the learned Trial Court in disbelieving the evidence which was full of discrepancies. The so called eye witnesses to the incident have turned hostile and in so far as the documentary evidence namely, medical certificates are concerned, were the result of over writing and possibility of preparation of this documents in the form of medical certificate at the instance of opponents of accused no. 1 was established on record as such, learned Trial Court rightly rejected the so called documentary evidence also. It is then submitted by the learned Counsel for Respondents that prosecution failed to even establish that the death of the deceased was a homicidal death. On the contrary, the evidence brought on record by the prosecution itself led to the possibility of self-immolation of deceased and as such, the possibility of deceased suffering an accidental death was not ruled out. It was then submitted by the learned Counsel for Respondents that the oral dying declarations and written dying declarations failed in inspiring the confidence of the Court and as per the settled position of law if the dying

declaration is not reliable and trustworthy and if it fails to inspire the confidence of the Court conviction cannot rests on such evidence and in that case the accused persons are entitled to grant of benefit of doubt and learned Trial Court adopted the same view. Hence it is the submission of learned Counsel for Respondent that criminal appeal may be dismissed.

4. With the assistance of learned Counsel appearing for the respective parties, we have gone through the evidence.

5. The prosecution case as reflected from the report based on the dying declaration can be summarized as follows:-

Victim – Yamunabai Asbe was residing with her other family members namely, husband Jagannath Asbe, two sons Sanjay and Raju in the house situated at Dandvasti village Shelve, Tq. Pandharpur. Yamunabai and her family was earning livelihood by cultivating agricultural land. The incident in question took place on 20.11.2000. Five years prior to the incident son of Jagannath and Yamunabai Raju approached accused no. 1 Anna with a request for lending him Rs. 15,000/- and agreed to work in his agricultural land. Accordingly, accused no. 1 gave him an amount of Rs. 15,000/- believing the

assurance of Raju that he would do agricultural work in lieu of Rs. 15,000/- but Raju neither reported accused no.1 for agricultural work nor repaid the amount of Rs. 15,000/- for the span of nearly 5 years.

6. On 20.11.2000 accused no. 1 along with his two servants i.e. Accused Nos. 2 and 3 reached the house of Raju by jeep and told Yamunabai and Jagannath (PW 1) either to repay the amount or to send Raju for doing agricultural work as assured by him. There was a refusal from Yamunabai and Jagannath and same led to heated exchange of words and altercations. Then accused no. 1 asked accused nos. 2 and 3 to caught hold of Jagannath and Yamunabai. Yamunabai started making hue and cry. Hearing hue and cry Yamunabai's brother and some other villagers rushed to the house of Jagannath (PW 1) and Yamunabai. Accused no.1 then went to jeep, took the kerosene can from his jeep, opened the cap of can and kept the cap in the jeep, poured the kerosene on Yamunabai and set her on fire. All three accused fled away from the spot. Some other villagers then gathered on the place of incident hearing hue and cry made by Yamunabai. One jeep was arranged. Yamunabai was initially taken to the Cottage Hospital, Pandharpur. Dr. Pratap Girgune (PW 15) who was attached to the said hospital at the relevant

time, on examination, found that the burns were of serious in nature. He referred the patient to Civil Hospital, Solapur for further treatment. Dr. Avinash Ghorpade was the duty medical officer at the relevant time and on receipt of the admission of Yamunabai in the burn ward, Dr. Ghorpade forwarded an information to the police chowki situated in the Civil Hospital, Solapur. Police head constable Shivaji Salunke (PW 11) who was on duty and in response to the information he approached Dr. Ghorpade. Both of them went to burns ward. Shivaji Salunke (PW 11) on ascertaining from Dr. Avinath (PW 13) that Yamunabai was conscious and well oriented, recorded her statement. Then he sent a letter to Executive Magistrate, Nagesh Javalkote (PW 12) requesting him to attend the hospital for recording dying declaration of Yamunabai. Nagesh (PW 12) reached the hospital and on ascertaining the consciousness and orientation of Yamunabai from Dr. Avinash recorded her dying declaration as per her say and same is treated as dying declaration. Two dying declarations namely, one recorded by police head constable Shivaji Salunke and other was recorded by Nagesh Javalkote (PW 12), Executive Magistrate, were forwarded in a sealed envelop to the police station Pandharpur and on receipt of the dying declarations

the police station officer API Yaqub Pimpri (PW 8) registered the Crime No. 203/2000 under Section 307 read with 34 of the IPC.

7. On 21.11.2000 Yamunabai who had suffered 78% of burn injuries succumbed to the burns at about 9.45 pm and on receipt of this information, offence initially registered under Section 307 was altered into an offence under Section 302 of IPC. Shri. Yaqub Pimpri who had taken over investigation on registration of crime then took further steps. The dead body of Yamunabai was subjected to postmortem. Opinion expressed by autopsy surgeon about the cause of death of Yamunabai was death due to toxic shock due to burns. Yaqub Pimpri (PW 8) also took certain other steps in the investigation such as, drawing the panchnamas in presence of panchas namely, spot and inquest panchanama. The material collected from the place of incident i.e. can containing small quantity of kerosene, match box containing matchstick, partially burned green saree, sample earth and earth smelling kerosene. As per the case of prosecution the accused persons were absconding since the day of incident and accused nos. 2 ad 3 were arrested on 28.11.2000. Accused no. 1 was found admitted in a private hospital at Pune. After his discharge his arrest was effected on 21.12.2000. Accused no. 2 when he

was in custody made a disclosure statement about the concealment of jeep in a field near village Akluj and the vehicle jeep was seized. The material seized from the place of incident was forwarded to forensic laboratory for chemical analysis. On receipt of CA report the investigation was concluded and charge-sheet was filed in the Court of JMFC. The offences being exclusively triable by the Court of Sessions the case was committed to the Court of Sessions.

8. The accused persons denied the charges and claimed trial. Though, the accused persons admitted their presence, their defence was of false implication as well as the suicidal burns by the deceased. The accused supported their defence by examining two defence witnesses. Learned Additional Sessions Judge on appreciation of evidence found that though, the prosecution brought on record certain witnesses claiming them as the witnesses on account of oral dying declaration, all those witnesses turned hostile and failed to support the case of prosecution. Learned Sessions Judge minutely scrutinized the evidence in the form of oral and written dying declarations and found that there are serious discrepancies more particularly, in the written dying declarations. Learned Trial Judge assigned the valid reasons for the conclusion drawn

by him that the written dying declarations are not trustworthy and recorded the judgment and order of acquittal.

9. On going through the evidence brought on record by the prosecution, we are of the opinion, that the learned Trial Court assessed and appreciated the evidence in proper perspective. The conclusion drawn by the learned Trial Court are based on sound and legal reasoning.

10. Now we may refer to the evidence brought on record. Jagannath Asbe (PW 1), husband of deceased Yamunabai stated before the Court that the family consisting of himself, his wife Yamunabai, his sons Raju and Sanjay were working with accused no. 1 Anna for nearly 7 years and they were residing in the field of accused No. 1 Anna. Then they left Akluj and shifted to their village Shelve except son Sanjay. This witness then admits that Raju approached accused no. 1 Anna for money and assured to work with Anna against the amount paid to him but neither he reported Anna nor repaid the amount. He further stated that the family members were asking Raju to report Anna as per assurance given by him but he was denying. Then he states that accused persons reached his house and asked about Raju. It was informed that Raju was

not at home. Accused then proceeded for their return, by that time Yamunabai set herself on fire. The witness was accordingly declared hostile.

In the cross-examination, this witness admits that while he was working with accused no. 1 Anna, accused no. 1 treated the family nicely. Accused no. 1 was making timely payment and was also paying money in advance to meet medical emergency and festival occasions. Then he stated that his sons Raju was educated upto 9th standard. He admitted that Raju borrowed an amount from Anna and agreed that against the amount borrowed by Raju, Raju and his wife would do agricultural work in the field of accused no.1. Then he stated about the recording the statement of Yamunabai at Civil Hospital, Solapur and recording of his statement after death of his wife.

11. Chandrakant Asbe (PW 2) is brother of Jagannath (PW 1) (brother-in-law of deceased). This witness also turned hostile. In the cross-examination this witness states that police drew panchanama of house of Jagannath and the kerosene can and its cap were in the house itself.

12. Uttareshwar Asbe (PW 3) is also brother of Jagannath and this witness has also turned hostile and toed line of witness Chandrakant.

In the cross-examination this witness states that can, the cap and the match box were lying inside the house of Jagannath and further stated that of asking Yamuna about the burns. Yamunabai told him that as Raju did not go for the work, she set herself ablaze.

13. Arvind Lohakare (PW 4) is the resident of the same locality. This witness also turned hostile. He reiterates that the can, cap and match box were lying in the house of Jagannath and stated in the cross-examination that when he reached to the house of Jagannath fire on the person of Yamunabai had been extinguished by Jagannath.

14. Bharat Pawar (PW 5) is the panch witness for the recovery of vehicle jeep in agricultural field along with another panch witness Rajendra Gangadhar Patil (PW 6). Both these witnesses have turned hostile.

15. Then Dattatraya Mhaske (PW 7) is the panch witness on seizure of articles at the place of incident. This witness also turned hostile. Similarly, another panch witness Tukaram Jadhav (PW 9) on

seizure of article from place of incident, turned hostile. In the cross-examination he stated that cap – article no. 5 was at the place of incident itself.

16. Sanjay Asbe (PW 10) son of couple Jagannath and Yamunabai also turned hostile. He stated in the cross-examination that he was in the hospital from 5.00 pm to 7.00 pm and his mother Yamunabai was unconscious in that period. He further stated in the cross-examination that when it came to his knowledge that police have recorded statement of his mother Yamunabai he made an inquiry to his mother as to whether any statement is made by her, she replied in negative. Then he admits that there are two groups in the village and the accused Anna is from one of the groups.

17. Shivaji Salunke (PW 11) is an important witness. The prosecution draws support in respect of dying declaration through this witness. This witness in examination-in-chief stated that he was on duty in the police chowki of Civil Hospital, Solapur at the relevant time. On 21.12.2000 on receipt of the case papers that one women Yamunabai Asbe is admitted to the hospital and is required to take her statement, he

went to room where the patient was admitted. Along with Dr. Ghorpade he went to the room where patient was under treatment and on ascertaining from Dr. Ghorpade as to whether the patient is in condition to talk he recorded the statement of that women. Then he read over the statement to that women and on assurance by that women that the statement was recorded as per her say he obtained her thumb impression of left thumb and then put his signature on the statement. Then he handed over the statement to Dr. Ghorpade. He also put his endorsement on the statement. Then he went to police chowki and forwarded a letter to Executive Magistrate, Shri Javalkote for recording the statement of that women. Shri Javalkote then reached the hospital. Shivaji (PW 11) then led Shri. Javalkote to the patient. Mr. Javalkote then asked Shivaji (PW 11) to remove himself from the room and contacted medical officer. After sometime Mr. Javalkote told Shivaji that he had recorded statement of the women and handed over a sealed packet to him. Mr. Javalkote then obtained signature of Shivaji (PW 11) about receiving the sealed packet.

In the cross-examination certain material admissions are brought on record. Shivaji (PW 11) admits that he had no knowledge as

to when the patient was admitted in the hospital and when he reached to that women she was already under treatment of Dr. Ghorpade and his staff. Then he admits that saline was administered to that women and the women was not kept in net. He also admitted that the women was surrounded by 2-3 persons and one of them was her husband. He further admitted in the cross-examination that he had not obtained a certificate from Dr. Ghorpade about fitness of the women to record the statement before he started recording the statement. Then he admits that to verify the fitness of patient so as to give the statement he put only one question to her i.e. he asked her to disclose her name to the doctor. He further admits that it is not recorded in the statement that the statement was read over to her and the contents of the statement were admitted by her. He further admitted that while recording the statement, the women asked for water once or twice and said to this witness that she is having burning sensation. He further stated that water was not given to her. He further admitted that while forwarding an information to Executive Magistrate it was not informed to the executive magistrate that he had recorded statement of victim. It was also not informed to the executive magistrate by him that the women was set on fire by another person. Then he

provided some other details, which may not be necessary for us to refer to these details as they are not very relevant. Then he admits that he had not taken any entry of taking statement of Yamunabai by him and sending letter to executive magistrate in the police station diary. Then certain suggestions were made to this witness and he denied those suggestions.

18. Nagesh Javalkote (PW 12) is another important witness. He stated that on 21.11.2000 at about 1-1.30 midnight one police constable came to him and handed over a letter to him for recording the dying declaration. On receipt of the letter he had been to the Civil Hospital. Firstly he went to the medical officer in-charge of OPD Dr. Ghorpade then he disclosed his identity to Mr. Ghorpade and informed the intention of his visit i.e. to record statement of Yamunabai. He requested the medical officer to examine patient so as to ascertain that the patient is conscious and in a condition to give statement. Then he requested the medical officer to record his finding about the fitness of patient in the statement. The medical officer then by putting date and time given endorsement about consciousness and fitness of patient to give statement. Then he recorded the statement as per the say of patient. It

was read over to the patient, the patient admitted the contents. Thumb impression of patient was obtained. Then this witness signed the statement and again asked the medical officer to examine the patient so as to ascertain fitness and consciousness of the patient and accordingly, it was ascertained and the doctor made an endorsement to that effect.

In the cross-examination this witness stated that there were more than 7 Executive Magistrates in the year 2000 who used to record the statements i.e. dying declaration. Then he stated that he was unable to tell name of police constable who had carried letter to him. Then he stated that when he reached the hospital treatment was being given to patient. Then he had shown an ignorance about saline being administered to the patient at that time. Then he admits that after recording the statement the same was not read over to the patient nor there is a reference that patient admitted the reading over of statement to her. Then he admitted that in the statement he had not recorded any endorsement to the effect that the patient was in a position to give statement and her statement was recorded by him as per her say. Then a suggestion was given to him in respect of entries in his writing on the report and he denied this suggestion.

19. Dr. Avinash Ghorpade (PW 13) is another important witness. He stated that on 21.11.2000 he was attached to Casualty Department, Civil Hospital, Solapur. One women by name Yamunabai was admitted in the hospital. She had sustained serious burns. On noticing this fact, he informed police chowki situated at the Civil Hospital, Solapur and on receipt of that information police head constable Shivaji Salunke approached this witness. He asked doctor as to whether the patient is in a position to give statement and on his affirmative reply police head constable proceeded to room where the patient was kept. Then he examined the patient and informed Mr. Salunke that he can record the statement of patient. Police head constable then recorded the statement of patient in his own writing. Then he stated that the statement was read over to the patient and patient admitted the contents. Then he stated that on conclusion of the statement he read over the statement to the patient and she admitted the contents of the statement. Head constable Shivaji who was their at that time obtained her thumb impression on the statement. He put his signature on the statement. Again he examined the patient and on finding that patient was conscious and oriented he made an endorsement on the statement.

Then he makes a reference to the Executive Magistrate who reached the hospital after ½ an hour. Then he states that the name of Executive Magistrate as Javalkote. Then he stated that he along with Executive Magistrate went near the patient and on examination stated that the patient was conscious, oriented and in a state to make statement. He accordingly put his endorsement at the top of statement. Then he put date and time below his endorsement. Then he stated that the Executive Magistrate recorded the statement in his writing. He read over the statement to the patient. She admitted the contents. Then he obtained her thumb impression on the statement and put his signature. Then he again examined the patient and on finding that patient was conscious and oriented he made an endorsement to that effect.

In the cross-examination he admitted that the patient was brought to the hospital by her relatives and her husband was accompanying her. Then he stated that he was unable to tell time of admission of the patient in the hospital and time of shifting the patient to the ward. Then he stated in the cross-examination that he is unable to tell as to whether the entries of two dying declarations was taken either in the case paper or in the casualty register. The witness was recalled and

accordingly, he was subjected to cross-examination. Then he confronted with the casualty register and he admitted that there is no mention of recording of dying declaration in the casualty register or on the case paper at Exhibit 77. Then he admitted that on admission of patient in the hospital indoor case papers were prepared. As per the indoor case paper the patient was admitted at 03.00 pm and was shifted to ward on 03.15 am. No history was mentioned of the patient on indoor case paper. Then he admitted that in the register in respect of dying declarations there are blank spaces on some places.

20. The above referred evidence and more particularly the cross-examination of witnesses shows that there are material inconsistencies and irregularities, as these inconsistencies and irregularities go to the root of the matter, it would be unsafe to rely on the so called dying declarations.

21. Ravindra Rasal (PW 14) who had conducted the part of investigation, stated about the part played in the process of investigation such as, recording statement of witnesses, drawing the panchamas, seizure of articles and seizure of vehicle.

22. Dr. Pratap Girgune (PW 15) is another important witness who was attached to the Cottage Hospital, Pandharpur as a medical officer. He stated before the Court in examination-in-chief that on 20.11.2000 at 11.00 pm one patient by name Yamuna Jagannath Asabe, age 45 years was brought to the hospital. Then he stated that patient was brought by her husband Jagannath Asbe and the history behind burns was given by the patient. She gave history of burns on 20.11.2000 at 9.00 pm by Mr. Anna Dinkar Kulkarni resident of Akluj. He noted history in MLC register. Her MLC No. 1375 dated 20.11.2000, 11.00 pm. He further stated that the patient had sustained 65% burns. He has informed the police about seriousness of the patient. He gave I.B. fluids and essential antibiotics to the patient and after initial primary treatment he referred the patient to the Civil Hospital, Solapur. Then he stated that he himself maintain MLC register in respect of patient in his own writing and the entries in MLC register bears his signature. He had brought the original MLC register and case papers concerning Yamunabai and they were produced in the Court. The case papers are at Exhibit 72.

This witness was subjected to a detailed cross-examination. The attempt of the defence Counsel was to show that the portion in the

history of the patient by Mr. Anna Dinkar Kulkarni resident of Akluj is an addition. There is also an overwriting in figure. Then he admitted in the cross-examination that before recording the history given by the patient the important aspects whether patient was conscious or fully oriented, it is necessary to note on the MLC register that the patient is conscious and oriented. He admitted in the cross-examination that he had not written in MLC register that the patient is conscious and well oriented but he had indirectly written that the patient is irritable. The suggestion of addition of the words and overwriting is denied by this witness. These aspect assume importance in the backdrop of the fact that the learned Judge found merit in the suggestion of the defence Counsel in the cross-examination. As it was the case of prosecution that the dying declaration wherein a reference made to the history is a supporting material to the case of prosecution and as it was seriously challenged by the defence, we may refer to the observations of the learned Trial Judge in paragraphs 16, 17 and 18 which reads thus:

16. In the MLC register at Exh. 74, the history alleged to have been given by the burnt Yamunabi. It seen tot have been scribed, but as has submitted by the accused learned advocate, doubt is also created in respect

of the words “by Mr. Anna Dinkar Kulkarni R/o Akluj” since these words are comparatively seen in faint ink than the earlier words about the alleged history of burns on 20-11-2000 at 9.00 P.M. Moreover, the words “Kulkarni R/o. Akluj” have been scribed below the right side words of the next above line and these words do not start from the extreme left side and below the beginning words of the above line.

17. *There is one more reason to take this view, as has been submitted by the learned advocate for accused. The other patients were admitted to the hospital and examined by the medical officer P.W. 15 Dr. Pratap Girgune and he noted the history in the MLC. register at Exh. 74, but none of the history incriminated any of the accused, in that particular case, despite those histories are in respect of the assault by chappal, stones etc.*

18. *There is also one more reason to take this view. Admittedly, the burnt Yamunabai was within a hour was shifted to the Civil Hospital, Solapur along with the reference letter. Undisputedly, xerox copy of the reference letter is at Exh. 73 and the original thereof is in the other case papers at Exh. 76. The medical officer P.W. 15 Dr. Pratap Girgune admits the referral to have been written by him and sent while referring the patient*

Yamunabia to the Civil Hospital, Solapur for further treatment, since she was seriously injured. The medical officer P.W. 15 Dr. Girgune admits that there is a column in the form of the reference letter about the history, in the reference letter at Exh. 73 is blank and the medical officer admits that even though he scribed the contents about the patient Yamunabai in the referral, he did not fill in the column about the history, even though he admits that, in that column history given by patient or any other one is required to be noted down. Thus, not ascribing of the history of the referral, which should have, normally, been written down, creates doubt about recording of the history given by the patient Yamunabai and incriminating the accused nos. 1.

23. We have gone through the MLC register which is the part of record. We find that in the register entry in respect of patient Yamunabai Jagannath Asbe is at serial no. 1375. Below entry it is written as 20.11.2000 11.00 pm referred to Solapur Civil. There is visible overwriting in the words 11.00 pm. It also reveals that after the words at 9.00 pm there is a full point and then the words by Mr. Anna Dinkar Kulkarni resident of Akluj appears. Then there is a graphic diagram showing the extent of burns to the body part is referred to. In so far as

entry no. 1375 in respect of Yamunabai Asbe is concerned, it is written patient irritable. Now the other entries at serial no. 1376 in respect of patient Dnyaneshwar Pawar shows that it is written that patient conscious, well oriented to the time, place and person. Similarly next entry no. 1377 in respect of Kalpanabai Dinkar Waghmare again it is written patient conscious, oriented to the time, place and person. The entry nos. 1376 and 1377 the first part i.e. the name of the patient, age of the patient, resident, patient brought by, alleged history and then date and time is mentioned. Now at entry no. 1375 in respect of Yamunabi Asbe is concerned, first part included that the word at 9.00 pm and then words by Mr. Anna Dinkar Kulkarni resident of Akluj appears. We have also seen the next entries i.e. Serial Nos. 1378, 1379 and 1380 and in all these entries it is observed that patient was conscious, oriented, well oriented to the time, place and person. There is also an entry dated 21.11.00 at serial no. 1390. The name of patient is written and in the opening part it is written as alleged history of assault but there is no reference in respect of the person who assaulted and such reference found place only at entry no. 1375 of the patient Yamunabai Asbe. It is admitted by the Dr. Pratap (PW 15) that while referring the other papers

there is no mention about the history. There is no reference to the person in the history and even reference letter Exhibit 73 nowhere mentions about the accused Anna Dinkar Kulkarni and that part is blank. Learned Trial Court thus, was justified in observing that the explanation provided by PW 15 were lame excuses. These material assumes importance on the backdrop of the defence version that as there was an enmity between two groups in the village and accused Anna Dinkar Kulkarni was belonging to one group hence, the possibility could not have been ruled out of implicating accused Anna at the instance of rival group. Learned Trial Judge was also justified in observing that this material also falls short to show that when the patient was admitted in the Cottage Hospital, she was conscious and well oriented.

24. At the cost of repetition, we may state that the MLC register shows the observation of PW 15 about patients condition as irritable. Though, the PW 15 submitted before the Court in the cross-examination that when he wrote down irritable it was to meant that the patient was conscious and well oriented but he had indirectly written that the patient is irritable. Then he stated that irritation means pain in the body and orientation mean state of mind of patient. Even this explanation by PW

15 cannot be accepted in view of the record perused by us which show that in so far as the immediate next patient it was written either the patient is well oriented or patient is conscious in respect of place, person and time. In view of these facts, the material in the form of Exhibit 72 and Exhibit 74 is not reliable and not inspiring the confidence of the court to treat the same as trustworthy evidence.

25. Now the another piece of material on which prosecution place reliance is dying declaration Exhibit 38 recorded by police head constable Shivaji Salunke in presence of Dr. Avinash Ghorpade (PW 13) also cannot be accepted in view of the admitted facts that when Yamunabai was admitted in the Civil Hospital, Solapur, there was no entry taken in the register maintain at the police chowki in the Civil Hospital, Solapur. It is interesting to note that there were other entries in the register of police chowki but was no entry was taken in so far as the admission of Yamunabai in Civil Hospital, Solapur is concerned. Not taking the entry in the register maintained at police chowki becomes more doubtful on the backdrop of the fact that the entries of others even small mishaps were taken by PW 11 but entry in respect of Yamunabai was not taken. In view of the defence raised by the accused that on

account of rivalry between two groups and accused no. 1 is belonging to one group as such he is falsely implicated and the record produced before the Court in respect of first admission of patient Yamunabi in the Cottage Hospital, Pandharpur showing that the patient had suffered 78% burns and PW 15 stating that patient was irritable creates a doubt as to when Yamunabi was admitted in Civil Hospital, Solapur was conscious and well oriented to give her statement or dying declaration. All the surrounding circumstances make the dying declaration Exhibit 38 unreliable and unacceptable. Learned Trial Judge was justified in not accepting this dying declaration as reliable one.

26. The defence had examined two witnesses.

Raghunath Talware (DW 1) is the police head constable who was attached to the police chowki in the premises Civil Hospital, Solapur at the relevant time. He stated that on that day at about 8.30 pm he received a call from police inspector Bahure attached to Sadarbazar police station informing him that husband of Yamuna Asbe had asked to record the statement of Yamunabi again and as such he was further asked to call Magistrate to record the statement. He stated that the relevant entry is at Serial No. 25 and he had produced a xerox copy of the entry exhibited as

Exhibit 40. Then he stated before the Court that the Magistrate arrived at the Civil Hospital and he refused to take statement of the patient. Then he handed over the charge of diary to police head constable Salunke.

27. Dashrath Patil (DW 2) stated before the Court that he admitted the presence of the accused on the relevant day at the house of Yamunabai and Jagannath. He further stated that he along with one Sanjay Khillare, Dada Tulshiram Asbe reached to the house of Yamunabai, Yamunabai and her husband, her husband's brother and his wife were there. Yamunabai went inside house. She then sustained the burns and was lying. He further stated that on asking her as to how it happened, she stated that her son Raju collected money from Anna was refusing to go for work. She told him that this is not an acceptable behaviour of a good man that accepting the money and not to go for work and as she was under tension she set herself on fire. Then he, Dada Asbe, Jagannath Asbe and Driver of Jeep took Yamunabai and they proceeded for Pandharpur but the vehicle was stopped by Jagannath at village Bhandishegaon. He told that he would pick one Rajendra Dhawre his friend accordingly, Rajendra joined them. Then Rajendra asked as to

how Yamunabai sustained burns, Yamunabai then replied that despite collecting money from accused Anna their son is not ready to go for work as such Yamunabai set herself ablaze to which Rajendra told the couple that not to state these facts before police. As asking by Jagannath as to how these facts should not be told to police Rajendra replied that attempt to commit suicide is an offence and she would be prosecuted for committing an offence. Then they went to Pandharpur. He further stated that when Yamunabai was brought to Cottage Hospital at 09.45 pm and medical officer started treatment at that time Yamunabia was bearing convulsions. Then they proceeded towards Solapur and on the way vehicle jeep was punctured, after getting necessary repairs done they reached to Civil Hospital, Solapur at 2.45 to 3.00 am and at that time Yamunabai was semi conscious and semi unconscious.

Though, this witness was subjected to detailed cross-examination by the learned APP, prosecution was unable to brought on record any material supporting the case of prosecution.

28. As of now, it is settled position of law that even solitary dying declaration, if it is reliable and trustworthy the conviction can be recorded on such solitary dying declaration whereas, even if there are

multiple dying declarations and the dying declarations inspires no confidence of the court merely because there are multiple dying declarations it cannot be basis for recording the conviction. It may not be necessary for us to refer to the various judgments of the Hon'ble the Apex Court as well as of this Court on these issues and as such, we refrain to refer to judgments.

29. Considering the entire evidence, learned Trial Court arrived at a conclusion that the so called evidence brought before the Court by prosecution was wholly insufficient. Neither oral dying declaration nor written dying declarations are reliable and trustworthy. The documents more particularly, MLC register clearly revealed that certain part in the documents was added making so called dying declarations untrustworthy.

30. Considering all these aspects, learned Trial Court granted benefit of doubt to the accused person and possible view was adopted by the learned Trial Court. We see no merit in the appeal, thus, appeal being devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)