

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.242 OF 2013

IN

SESSIONS CASE NO.428 OF 2013

Raju Dadu Londhe

.. Appellant
(Original Accused)

v/s.

State of Maharashtra

.. Respondent
(Original Complainant)

....

Ms. Apeksha Vora, for the Appellant.

Mrs. M.M. Deshmukh, APP, for State.

....

CORAM: NITIN JAMDAR &
G.A. SANAP, JJ.

DATE : 6 SEPTEMBER 2021.

JUDGMENT (Per G.A. Sanap, J.) :

In this appeal challenge is to the judgment and order dated 20 October 2012 passed by the learned Sessions Judge, Pune, whereby the learned Sessions Judge convicted the Appellant for offences punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/- (Rupees Five Hundred Only) and in default to undergo R.I. for six months. The facts are as follows :-

2. The deceased Varsha was the wife of the Appellant. The Appellant and deceased with their two children, namely, Prathmesh and Roshan, used to reside at servants' quarter of Bungalow No. A-19, B.R.C.H.S., Phase-II, Dhanorigaon, Pune, owned by Ashok Singh. The deceased used to do household work at the said bungalow under the supervision of Suman Singh, wife of Ashok Singh. The Appellant used to do painting work.

3. It is the case of the prosecution that the Appellant is addicted to liquor and he used to quarrel with the deceased frequently. The incident in question occurred on 7 May 2011. It is the case of the prosecution that on 7 May 2011, at about 10.45 p.m., after dinner, the Appellant picked up quarrel with the deceased on domestic reason. The deceased requested him not to quarrel with her. The Appellant got annoyed. The Appellant doused the deceased with kerosene available in the can at the house and set her ablaze by throwing a burning matchstick on her person. The deceased ran out of her house in burnt condition. She fell near the parking area of that bungalow. After hearing commotion and shouts, Suman Singh and her husband Ashok Singh rushed to the spot. They extinguished the fire on the person of the deceased. Suman informed the police on phone. Suman and her husband, instead of waiting for police to come, decided to take the deceased to the hospital. The couple, in their four wheeler took the deceased to Sasoon Hospital, Pune for medical treatment. It is the

case of the prosecution that on the way to hospital, the deceased Varsha, disclosed to Suman Singh that her husband Raju, the Appellant herein, poured kerosene on her person and set her on fire and caused her burn injuries.

4. The deceased was admitted in Sasoon Hospital, Pune. Dr. Charandeep Singh attached to the Burn Ward treated her. On receipt of the information from the hospital, the Police Head Constable attached to Vishrantwadi Police Station, immediately went to Sasoon Hospital. He made enquiry. After ascertaining the fitness of deceased Varsha from Dr. Charandeep Singh, the Head Constable recorded the statement of the deceased. The deceased narrated the incident, and more particularly, the cause of sustaining burn injuries. The deceased stated that the Appellant had poured kerosene on her body and set her on fire and caused burn injuries. On the basis of the statement of the deceased, the Head Constable registered a crime, bearing CR No.117 of 2011, under Section 307 of the Indian Penal Code against the Appellant.

5. The Assistant Sub-Inspector of Police, Ashok Kadam, visited the spot of incident and drew the spot panchnama in presence of the panchas. He effected the seizure of plastic can, burnt pieces of saree, burnt pieces of curtain, matchbox and chappal from the spot of incident. Arrest of the Appellant was effected in the morning of 8 May

2011. The Investigating Officer seized his jeans pant and full shirt.

6. During the course of medical treatment at Sasoon Hospital, deceased Varsha succumbed to the burn injuries at 1.00 p.m. on 8 May 2011. The Investigating Officer did the inquest panchnama on the dead body. After death, Section 302 of the IPC was added in the crime. Autopsy was conducted on the dead body. The Investigating Officer forwarded the seized articles in the crime for analysis to Chemical Analyzer. The IO recorded the statements of the witnesses. On completion of the investigation, he filed the charge-sheet in the Court of the learned Judicial Magistrate, First Class, Pune. On committal of the case to the Sessions Court, the Sessions Judge framed the charge against the Appellant. The Appellant pleaded not guilty. Defence of the Appellant is of total denial.

7. In order to bring home the guilt against the accused, the prosecution examined 8 witnesses. The prosecution relied upon number of documents. The most important document relied upon by the prosecution is the dying declaration of the deceased, recorded by the Head Constable. The learned Sessions Judge, on appreciation and consideration of the evidence, found the oral and documentary evidence sufficient to establish the guilt against the accused. The learned Sessions Judge, therefore, convicted and sentenced the Appellant as above.

8. Being aggrieved and dissatisfied with this judgment and order passed by the learned Sessions Judge, the Appellant has come before this Court in appeal. The grounds of challenge to the impugned judgment have been set out in the memo of appeal. The main ground is that in the absence of cogent and concrete evidence, the learned Sessions Judge has held him guilty. It is further contended that the appreciation of evidence in the proper perspective would have led to the acquittal of the Appellant.

9. We have heard Ms. Apeksha Vora, the learned Advocate for the Appellant, and Mrs. M.M. Deshmukh, the learned APP for the State. We have perused the record and proceeding.

10. Ms. Apeksha Vora, the learned Advocate for the Appellant, submitted that the evidence adduced by the prosecution is not cogent and concrete to prove the case of the prosecution against the Appellant. The learned Advocate submitted that there are material inconsistencies in the evidence of the material witnesses examined by the prosecution. The learned Sessions Judge has not taken those inconsistencies into consideration. The learned Advocate submitted that the statement of the deceased recorded by the Head Constable, sought to be relied upon as dying declaration, is not worthy of credence and acceptable. The learned Advocate submitted that if the admitted

facts and surrounding circumstances are read with the said dying declaration then it would show that no credence can be given to the said statement. The learned Advocate submitted that before recording the dying declaration, the Medical Officer did not certify the fitness of the mind of the deceased to make a statement. In the submission of the learned Advocate, since the deceased, according to the prosecution, had sustained 96% burn injuries, she would not have been fully oriented and in a position to speak. The learned Advocate submitted that, therefore, the dying declaration and the oral evidence relied upon to corroborate the same, needs to be discarded.

11. The learned Advocate submitted that the evidence of Suman Singh is of no help to the case of the prosecution to take the case of the prosecution further. The learned Advocate pointed out that the so called oral dying declaration, sought to be established on the basis of the testimony of Suman Singh, is not at all believable. As far as the child witness is concerned, the learned Advocate submitted that he is the son of the Appellant and the deceased. The learned Advocate, on the basis of the answers elicited in his cross-examination, submitted that the child witness is the tutored witness. The learned Advocate sought to contend that there are material omissions and inconsistencies in his evidence and, therefore, no credence can be attached to the said evidence. The learned Advocate submitted that if the evidence of the child witness is considered and appreciated in juxtaposition with the

other oral and documentary evidence, it would prove beyond doubt that he is totally unreliable. The learned Advocate further submitted that the evidence on record is not sufficient to establish the aggravating circumstances to hold the Appellant guilty of an offence under Section 302 of the IPC. In the submission of the learned Advocate, the evidence adduced by the prosecution lacks credibility and as such the Appellant deserves to be acquitted by allowing the appeal.

12. The second plank of the submission of the learned Advocate for the accused is that if the evidence adduced by the prosecution is taken into consideration in totality, then the offence made out would be punishable under Section 304 Part II of the Indian Penal Code. The learned Advocate submitted that at the most on the basis of the evidence, the knowledge of likely death due to injury could be attributed to the Appellant.

13. Mrs. M.M. Deshmukh, the learned APP, submitted that the evidence adduced by the prosecution is cogent and credible. The learned APP submitted that the evidence stood the scrutiny of the cross-examination and also passed the test of credibility while deciding the prosecution case by the learned Sessions Judge. The learned APP submitted that the dying declaration of the deceased has been corroborated in material particulars by other cogent and concrete evidence. The learned APP pointed out that the evidence of the

Medical Officer, who was present and treated the deceased immediately before recording her dying declaration, and the evidence of the Head Constable, who recorded her dying declaration, is natural, consistent and, therefore, cannot be disbelieved. The learned APP submitted that the oral evidence of the Medical Officer and Constable has been supported by the contemporaneous record. The learned APP pointed out that Suman Singh (P.W. 1) is independent witness. She had no axe to grind against the Appellant. The learned APP submitted that the conduct of P.W.1 - Suman Singh, and her husband, is consistent with the conduct of a man of ordinary prudence. The learned APP pointed out that the perusal of the evidence of Suman Singh in entirety would show that there is no semblance of admit on her part. The learned APP submitted that the evidence of the child witness also cannot be discarded merely because of some omissions and consistencies in his statement. The learned APP submitted that the omissions and consistencies brought on record in his evidence are not major and material so as to discard the evidence of the child witness in toto. The learned APP submitted that on the basis of cogent and concert evidence, the prosecution has proved the guilt against the accused. The learned APP submitted that the conduct of the accused coupled with the evidence, proves beyond doubt that he had intention to commit the murder of the deceased. The learned APP supported the judgment and order passed by the learned Sessions Judge.

14. In order to appreciate the rival submissions it would be necessary to take a fresh look at the oral and documentary evidence adduced by the prosecution, which has been made a basis of conviction of the Appellant. The perusal of the record would show that the case of the prosecution mainly rests on the dying declaration of the deceased. The prosecution has also placed reliance on other evidence to seek corroboration to the dying declaration of the deceased. The learned Sessions Judge has found the dying declaration of the deceased voluntary, truthful and trustworthy. The credibility of the dying declaration and the corroborative evidence relied upon by the prosecution as well as the finding recorded by the learned Sessions Judge has been seriously assailed in this appeal by the learned Advocate appearing for the Appellant. Before proceeding to venture into the issue of the appreciation of the evidence, it would be necessary at the outset to consider the settled legal position with regard to the admissibility, credibility and the evidential value of the dying declaration. Similarly, it is necessary to consider the legal position on the procedural part of the recording of the dying declaration and other related circumstances. We can profitably refer to the decision of the Hon'ble Supreme Court of India in the case of *Laxman vs. State of Maharashtra*¹. In this judgment, the Hon'ble Supreme Court of India has laid down the law on all the relevant aspects touching the evidence of dying declaration. The relevant observations can be found in Para

¹AIR 2002 SCC page 2913(1)

No. 3 of this report. Para No.3 can be reproduced for the purpose of clarity. It reads thus:-

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records

a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

15. It is settled position that if the dying declaration is proved to be voluntary, truthful and trustworthy then it can stand on the same footing as any other piece of evidence. The credibility and trustworthiness of the dying declaration needs to be considered in the light of the circumstantial evidence and the facts of the particular case. It is pertinent to mention that since the person making the statement is not available for cross-examination, great amount of care is required to be taken. The material placed on record on appreciation must satisfy the test of credibility and rule out the possibility of tutoring, etc. It is settled legal position that if the dying declaration passes the test of truthfulness and trustworthiness then it can be made the sole basis of conviction.

16. The dying declaration of the deceased is at Exhibit 28. On the basis of the evidence it is necessary to see whether she was in a fit state of mind and fully oriented to make the statement when it was recorded by P.W.No.7. It is undisputed that the P.W.No.1 immediately after the incident made a phone call to the police station. P.W.No.1 and her husband took the deceased for treatment to Sasoon Hospital.

On admission of the deceased in the Sasoon Hospital, the information was conveyed to the Vishrantwadi Police Station, Pune. The statement of the deceased was recorded by P.W.No.7-Deepak Paranjape, Police Head Constable attached to Vishrantwadi Police Station. In his evidence he has deposed that on receipt of the information, he was deputed to Sasoon Hospital for the purpose of enquiry. In the Sasoon Hospital, he met Dr. Charandeep Singh, P.W.No.4. In his evidence, P.W. No.7 has deposed that he made enquiry with Dr. Charandeep Singh about the fitness of the deceased to make the statement. He has categorically stated that P.W.No.4-Dr. Charandeep Singh, who examined the deceased, confirmed that the deceased was conscious and fully oriented. Thereafter, P.W.No.7 recorded her statement in presence of P.W.No.4. P.W.No.7 in his evidence has deposed about the manner of recording of the statement, the presence of P.W.4 and the steps taken to obtain the thumb impression of the deceased on the said statement. P.W.No.7 has deposed that the left hand thumb of the deceased was burnt and, therefore, he obtained the right hand thumb impression of the deceased on the statement. He was subjected to cross-examination. The perusal of his cross-examination in entirety would show that no material has been elicited in his cross-examination to discard and disbelieve his evidence. He has categorically deposed that except Dr. Charandeep Singh, no other person was present in the hospital. It is pertinent to mention at this stage that the parents and relatives of the

deceased are residing at Mumbai. Nobody from her parental family was present in the hospital. Her sons were at home. P.W.No.1 and her husband, after admitting her in the hospital, left the hospital. Therefore, in this case the possibility of tutoring before recording statement of the deceased by P.W.7 has been ruled out to our satisfaction.

17. In this context, it would be necessary to consider the evidence of P.W.No.4-Dr. Charandeep Singh. In his evidence P.W.No.4 has categorically deposed that the deceased was in a fit state of mind at the time of making the statement. He has deposed that P.W.No.7, before commencing the recording of her statement, got the confirmation from him about the consciousness and orientation of the deceased to make the statement. During his cross-examination, it was suggested to him that due to the sedative drug administered by him to the deceased, she was not fully oriented and in a position to speak. He has denied this fact. In his evidence, P.W.No.4 has categorically deposed that the deceased made the statement in his presence and it was recorded by P.W.No.7. He has further deposed that after completion of recording of statement of the deceased by P.W.No.7, he made endorsement in his handwriting on the said statement, on 8 May 2011 at 1.30 a.m. P.W. Nos.4 and 7 have categorically deposed that the deceased was in a fit state of mind when she made statement. P.W. Nos.4 and 7 have been subjected to searching cross-examination. On

perusal of their cross-examination, we could not notice any material to discard and disbelieve their testimony.

18. The oral evidence of P.W. Nos.4 and 7 on the point of the recording of the statement of the deceased by P.W.No.7 and the circumstances related thereto have been corroborated by the contemporaneous record. Exhibit 28 is the dying declaration. On the said dying declaration P.W.4 had made the endorsement. The endorsement has been separately marked as Exhibit-18. This endorsement was made on 8 May 2011 at 1.30 a.m. He has recorded that the statement was made in front of him. It is pertinent to mention that while recording this endorsement, he has failed to mention that the deceased was conscious and in a fit state of mind to make the statement. In our view, failure to make the mention of this fact while recording this endorsement would not make his evidence untrustworthy of credence. There is ample evidence to corroborate his statement about the fitness of the deceased to make a statement on the given date and time. P.W.No.4 has produced on record the papers of the MLC No.6661 dated 8 May 2011. The perusal of the MLC papers, which are marked as Exhibit 19, would show that the history of the incident was narrated to the doctor by the deceased and Suman Singh. It would show that P.W.No.4 had recorded that no sedatives shall be administered till further orders. He recorded that the deceased was conscious and oriented. The MLC papers would further show that

P.W.No.4 had requested the RMO to arrange for the Magistrate for recording of the statement. On this letter, at the bottom, there is an endorsement made by P.W.7 Head Constable, stating that he recorded the statement of the deceased in presence of the doctor. Further perusal of this letter would show that after recording the statement of the deceased by P.W.No.7, further request was made by P.W. No.4 to the RMO to arrange for the Magistrate to record the statement of the deceased. It is undisputed that for some reason or the other, the steps were not taken by the RMO to secure the presence of the Magistrate.

19. It is pertinent to note that P.W. Nos. 4 and 7 could not be said to be chance witnesses. The oral evidence has been fully corroborated by the contemporaneous record. The deceased was admitted in the hospital at 12.30 a.m. The endorsement in the MLC papers that she was in a fit state of mind was made at 1.00 a.m. It has come on record that the process of recording of her statement commenced and completed between 1.00 a.m. and 1.30 a.m. The evidence of P.W.No.4 and P.W.No.7 proves beyond doubt that at the time of the recording of dying declaration of the deceased, she was conscious and oriented. It has been proved on the basis of their evidence that after ascertaining the fit state of the mind of the deceased, P.W.No.7, in presence of P.W.No.4-Dr. Charandeep Singh, recorded her statement.

20. The voluntary nature of the dying declaration, its truthfulness and trustworthiness needs to be decided primarily on the basis of the account of the incident narrated in the dying declaration as well as on the basis of surrounding circumstances and other material evidence. In her statement, the deceased narrated the unfortunate incident, which ultimately led to her death. Perusal of the dying declaration Exhibit 28 would show that in first paragraph she has narrated the details of her family and her occupation. She has stated that she was working as a maid servant at the house of Ashok Singh. As far as the main incident is concerned, it is stated that on 7 May 2011, in the night, at about 20.45 hours, after dinner, on domestic reason, her husband Raju quarreled with her. She has stated that she told him not to quarrel with her. Her husband became angry and poured kerosene from the can at the house on her person with intention to kill her and set her ablaze by igniting a match stick from the match box. She has further narrated that in burnt condition she came out from the house shouting. In the dying declaration, she has confirmed the presence of P.W.No.1 and her husband on the spot. She has stated that at that time, neighbour Suman and her husband Ashok extinguished the fire from her person and brought her to Sasoon Hospital for treatment. She has stated that at the time of the incident, her both children were in the house. In our opinion, plain reading of this statement would show that she does not speak of any vengeance or vindictiveness towards her husband. It would show that she did not

try to exaggerate the incident. The perusal of the dying declaration in entirety would show that it contains honest account of the incident of sustaining the burn injuries. The couple was blessed with two children. They were happily leading their life. The deceased was performing her role as an obedient wife. There was no reason to falsely implicate her own husband in the commission of such a diabolic crime. The perusal of the dying declaration in entirety would prove with certainty that the Appellant quarreled with the deceased and he got angry upon receiving the suggestion from the deceased to pacify himself and thereafter poured the kerosene on her person and set her ablaze.

21. We have already considered and appreciated the evidence of P.W. Nos. 4 and 7. Their evidence is credible and trustworthy. In order to complete the chain of corroborative evidence, it would be necessary at this stage to consider the version of P.W.1 Suman Singh. In her evidence, P.W. No.1 in great detail narrated the incident as well as the oral dying declaration made by the deceased to her on the way to the hospital. The deceased was a maid servant at the bungalow of Suman Singh. She has deposed that at about 10.45 p.m., on 7 May 2011, she heard the commotion and cries in the compound. When she came to the balcony of her bungalow, she saw that the deceased was engulf in fire. She has deposed that the Appellant and her two children were standing near her. She has deposed that they came downstairs. By

that time, the fire on her person was extinguished. The deceased requested her to take her to hospital. She has deposed that without waiting for police, she put the deceased in her car and she and her husband took the deceased to hospital. She has deposed that on the way to the hospital, she was crying and repeatedly asking the deceased as to why she did this thing. She has stated that upon this, the deceased told her that her husband poured kerosene on her person and set her ablaze. She has deposed that she has initially took the deceased at Kedarnath Hospital at Vishrantwadi. Hospital people refused to admit her. Therefore, they took her to Sasoon Hospital and admitted her there. As far as the conduct of the Appellant is concerned, P.W.1 has deposed that the Appellant was in habit of consuming liquor. He used to frequently quarrel with the deceased. In her cross-examination she could not be deviated a inch from her original statement. On the contrary, the admissions given by her in the cross-examination fortified her credibility. She has stated that Varsha was having a very good nature. 8 days prior to the incident, the deceased Varsha's pregnancy was terminated at Kelkar Hospital. She had spent for her abortion. She has denied the suggestion that the deceased was depressed due to abortion. Some omissions have been brought on record. Those omissions are innocuous. The perusal of the evidence of P.W.No.1 in entirety would show that she has narrated before Court the true account of the incident. She is the natural witness. She has not attempted to exaggerate the incident. It is further pertinent to note

that P.W.No.1 had no axe to grind against the Appellant. No material has been brought on record to indicate that P.W.No.1 and her husband has been nurturing any grudge against the Appellant. The evidence would show that Suman Singh was holding the position of a trust and confidence for the deceased. The deceased embarked on the last journey of her life with P.W. No.1 and on the way she narrated the true cause of her sustaining the injuries. It is pertinent to mention that the oral dying declaration made to the person holding the position of trust carries high degree evidentiary value. Suman Singh P.W.No.1 has categorically admitted that she was treating the deceased, the children and her husband as a family. Suman Singh P.W.1 and her husband did not wait for the police to shift the deceased to the hospital. P.W.No.1 and the deceased, as can be seen from the evidence had developed a strong and unbreakable bonding. It is, therefore, not possible to conclude that the evidence of P.W.No.1 is not worth credible. On the basis of the credible evidence of P.W.No.1 apart from the incident, the oral dying declaration made by the deceased to P.W.No.1 relating to the cause of her death or the circumstances leading to the cause of her death, have been proved. The perusal of the evidence of P.W.Nos.1, 4 and 7 together would lead an assurance of credibility to the dying declaration, written as well as oral, made by the deceased. This evidence is sufficient to conclude that the dying declaration made by the deceased was voluntary, truthful and trustworthy. The said dying declaration cannot be discarded merely because it was made before the

Head Constable P.W.No.7. There is no reason to discard and disbelieve the evidence of P.W.No.1 with regard to the oral dying declaration by the deceased to her. The oral evidence of P.W.Nos.1, 4 and 7 has been corroborated by the contemporaneous documentary evidence. Similarly, the oral evidence of P.W.Nos.1,4 and 7 fully corroborates the truthfulness and trustworthiness of the dying declaration made by the deceased.

22. The deceased succumbed to the injuries on 8 May 2011 at 1.00 p.m. There is a medical evidence to establish the burn injuries sustained by the deceased. P.W. No.5 Dr. Amol Shinde, along with Dr. Amar, had conducted the postmortem examination on 8 May 2011 between 7.00 p.m. and 8.15 p.m. P.W. No.5 noted down the antemortem superficial to deep burn injuries on the body of the deceased. The injuries are as follows:-

- A) Head, neck and face – 05%
- B) Right upper limb – 08%
- C) Left upper limb – 08%
- D) Abdomen and chest – 18%
- E) Back – 18%
- F) Genitals – 01%
- G) Right lower limb – 17%
- H) Left lower limb – 17%

23. The postmortem report is at Exhibit 20. P.W.No.5 has

opined that the deceased died due to sustaining 92% ante mortem burn injuries. The cause of death is the shock caused by the burns. It has been categorically stated that the injuries were ante mortem. The evidence of the other witnesses has established that the Appellant poured the kerosene on the person of the deceased and set her on fire. The evidence of Medical Officer, coupled with the other evidence, is sufficient to accept case of the prosecution that the deceased died a homicidal death. P.W.No.5 has categorically stated that he found ink mark on the right thumb of the dead body of Varsha Londhe. This fact has been recorded in the postmortem report at Exhibit 20. This important fact corroborates the version of P.W.No.7 on the point of obtaining the right hand thumb impression instead of left hand thumb impression on the dying declaration. His statement further fortifies that the thumb impression of the deceased was taken on some paper. This evidence of the Medical Officer, in our opinion, lends an assurance to the credibility and trustworthiness of P.W.Nos. 4 and 7. It would be necessary at this stage to consider the other corroborative evidence. P.W.No.8 is the Investigating Officer. On 8 May 2011, in presence of two panch witnesses, he drew the panchnama of spot and seized the articles found on the spot, namely, the kerosene can, burn cloth pieces, match box, burnt curtain piece and one chappal. Similarly, on arrest of the accused, his clothes were seized. The articles were sent to the Chemical Analyzer. The report of the Chemical Analyzer confirmed the traces of the kerosene on the clothes of the

accused. In our opinion, this is very important aspect weighing in favour of the case of the prosecution.

24. The Appellant has examined himself as a witness in support of his defence. Minute perusal of his evidence would show that instead of supporting his defence, he has lent support to the case of a prosecution. In his evidence, he has sought to establish that the deceased died accidental death. He has stated that he extinguished fire on her person. This fact has not been supported by the documentary evidence. It is not his case that he had sustained the injuries in the attempt of extinguishing the fire. The deceased had sustained 92% burn injuries. One can, therefore, visualise the situation. If the Appellant had attempted to extinguish the fire, he would have definitely sustained some injuries. The absence of injuries on his person would clearly indicate that he did not attempt to extinguish the fire. The evidence is sufficient to prove that he did not accompany P.W.Nos. 1 Suman Singh and her husband to the hospital. Similarly, he did not visit the hospital. He did not inform the parents of the deceased about the incident. If the accused was not responsible for the incident, he would have been the first person to make a hue and cry and carry the deceased to the hospital with the help of P.W.1 and 6. His conduct is not consistent with his evidence. If considered in proper perspective, in our opinion, it would lead credence to the case of the prosecution.

25. P.W.6 is the son of the Appellant and deceased. According to the prosecution, he was present in the house when the incident occurred. He has deposed before Court about the incident. The learned Sessions Judge, as can be seen from the judgment, has not found the evidence of the child witness P.W.No.6 reliable. The learned Sessions Judge has recorded the reasons for keeping this evidence out of consideration. On minute scrutiny of the evidence, we do not see any reason to disagree with this finding recorded by the learned Sessions Judge, vis-a-vis the evidence of P.W.No.6.

26. In our opinion, even if the evidence of P.W.No.6 is kept aside and out of consideration, the other credible oral and documentary evidence would be sufficient to prove the case of the prosecution. The dying declaration has been proved to be voluntary, truthful and trustworthy. The oral dying declaration made by the deceased to P.W.1 has also been proved to be worthy of credence. The written and oral dying declarations have been corroborated by other oral and documentary evidence. There is ample contemporaneous record to lend corroboration to the dying declaration. In our opinion, the evidence led to prove the dying declaration and the fact proved on the basis of a dying declaration could not be assailed.

27. We have given thoughtful consideration to the submissions

made by the learned Advocate for the accused on the point of touching the offence made out in this case would be under Section 304 Part II and not the murder. In our opinion, this submission cannot be accepted. There is ample evidence to attribute the intention of committing murder of the deceased by the Appellant. The quantity of the kerosene poured on the person of the deceased can be gathered on the basis of the internal and external burn injuries sustained by the deceased. The deceased had sustained 92% burn injuries. The conduct of the accused clearly indicate that he did the act with an intention to kill the deceased. He did not extinguish the fire. He did not accompany the deceased to the hospital. Therefore, the case of the accused is not be covered under Section 300, Exception 4 of the IPC. Therefore, we are not inclined to accept the submissions made by the learned Advocate for the Appellant.

28. On the basis of the cogent and concrete oral and documentary evidence, the possibility of suicidal or accidental death of the deceased has been completely ruled out. The proposition of law laid down in the judgment (*supra*), therefore, applies to the facts of this case. On minute scrutiny and appreciation of evidence, we are fully convinced that the judgment passed by the learned Sessions Judge does not suffer from any infirmity. It does not warrant inference. In view of the above, the submission advanced by the learned Advocate for the Appellant cannot be accepted. The submissions advanced by

the learned APP deserves acceptance. We conclude that there is no substance in the appeal. The appeal, therefore, deserves to be dismissed. Appeal is dismissed.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)

SMITA JOHNSON
GONSALVES

Digitally signed by SMITA
JOHNSON GONSALVES
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