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

**CRIMINAL APPEAL NO. 499 OF 2016**

1. Bharat S/o Waman Muley,  
Age : 36 years, Occu. Agril.,  
R/o Umari, Tq. Kaij, Dist. Beed,
2. Dhanraj S/o Waman Muley,  
Age : 38 years, Occu. Agril.,  
R/o Umari, Tq. Kaij, Dist. Beed,
3. Manisha D/o Sampati Muley,  
Age : 31 years, Occu. Household,  
R/o Umari, Tq. Kaij, Dist. Beed. ...APPELLANTS  
(Accused)

**VERSUS**

The State of Maharashtra ... RESPONDENT

Mr. S. J. Salunke, Advocate for the appellant Nos. 1 and 2  
Mr. S. P. Deshmukh, APP for the respondent/State

WITH

**CRIMINAL APPEAL NO. 807 OF 2022**

Manisha D/o Sampati Muley,  
Age : 22 years, Occu. Nil,  
R/o Umari, Tq. Kaij, Dist. Beed,  
Presently at : Yerwada Prison, Pune. ... APPELLANT  
(Ori. Accused No.3)

**VERSUS**

The State of Maharashtra  
Through Police Station Officer,  
Kaij Police Station,

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Tal. Kaij, Dist. Beed. ... RESPONDENT

Mr. V. P. Sawant, Advocate for the appellant  
Mr. S. P. Deshmukh, APP for the respondent/State

**CORAM : R. G. AVACHAT &  
R. M. JOSHI, JJ.  
RESERVED ON : 16<sup>th</sup> NOVEMBER, 2022  
PRONOUNCED ON: 29<sup>th</sup> NOVEMBER, 2022**

**JUDGMENT (PER- R. M. JOSHI, J.):-**

1. "Nemo moriturus praesumitur mentire" means a man will not meet his maker with a lie in his mouth, is a legal principle, based upon theory that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. Such statements are admitted, upon consideration that their declaration made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak truth.

2. The above legal principle has perfect application to the present case as it can be seen from the

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material evidence on record the case of the prosecution unfolds which is narrated in short as under:

(a) On 19/04/2015 at about 3.00 am accused No.3 Manisha called Varsha(deceased) out of her house and after she came out of the house accused No. 1 Bharat poured kerosene on her person and accused No. 2 Dhanraj ignited match stick and set her ablaze. According to deceased the said incident has occurred owing to the previous dispute/quarrels between them. After she was set ablaze her son Nikhil came out of the house on hearing her cries and he saw accused persons running away from the spot. Varsha was taken to S.R.T.R. M. C. & Hospital, Ambajogai, Dist. Beed and was admitted there at about 5.35 am. The Medical Officer on duty informed about the same to the police chowky situated at the hospital and accordingly between 6.45 to 7.15 am first statement of deceased came to be recorded by the Police Head Constable. On that day itself at about 11.25 am another statement of Varsha was pen down by the Executive Magistrate. In both statements she narrated

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the incident of her being set ablaze and the said act being done by accused herein. On the basis of first statement of Varsha offence came to be registered against the accused vide Crime No. 88 of 2015. On 30<sup>th</sup> April, 2015 at around 10.30 pm Varsha died while being treated in Hospital.

(b) During the investigation spot panchnama was drawn and a plastic Can, match sticks and burn pieces of saree were recovered. The spot of the incident was found in front of the house of deceased. According to the prosecution accused No.1 Bharat made disclosure statement and pursuant there to his clothes were recovered and seized. Seized muddemal was sent to the F.S.L. for chemical examination and its report is filed on record. Investigating Officer recorded statements of witnesses and on conclusion of investigation charge-sheet came to be filed. On committal of case, Trial Court framed charge against accused vide Exhibit 6. Since, accused abjured the charge they were put on trial, which culminated into their conviction.

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3. Appellants/accused took exception to the judgment dated 22<sup>nd</sup> July, 2016 passed by the Additional Sessions Judge, Ambajogai, Dist. Beed in Sessions Case No. 58 of 2015 by filing these appeals under Section 374 of the Code of Criminal Procedure (Appellants are referred to as accused hereinafter).

4. There is no eye witness to the incident in which deceased sustained burns and the prosecution has sought to prove guilt of the accused by mainly placing reliance on proof of the written dying declarations of deceased at Exhibit 30 and 40 through Balkrushna (PW-5), Narayan (PW-8) and two Medical Officers Dr. Tushar (PW-6) and Dr. Vaibhav (PW-7). Apart from this oral dying declarations made to Nikhil (PW-1) and Baban (PW-4) are taken support of. In all 10 witnesses were examined. Govind (PW-2) was examined to prove the map of the spot which was found to be in front of the house of the deceased. Spot panchanama (Exhibit 23) was sought to be proved through Baban (PW-4) who claimed seizure of

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incriminating articles from the spot. Medical Officer Dr. Vishwajit (PW-9) who conducted autopsy on the dead body gave cause of death of deceased as septicemia due to 88% of superficial and deep total body surface area. Recovery of the clothes of the accused No.1 are sought to be believed through testimony of Investigating Officer Pravin Chavan (PW-10).

5. Learned counsel for accused Nos. 1 and 2 submitted that dying declarations upon which reliance is placed by prosecution are not trustworthy and are inconsistent to each other. In this regard reference is made to statement of deceased Exhibit 30 and 40 wherein according to him the prior incident mentioned therein is different and this makes these two dying declarations unbelievable. Attention of this Court is also drawn to the evidence of Nikhil (PW-1), Baban (PW-2) and Dr. Tushar (PW-6) who have given different account of the incident in question which according to him run contrary to the written dying declarations recorded during

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the investigation. Other submissions made challenging the dying declarations on various counts are dealt with at appropriate stage herein after. His endeavour was to convince this Court that no conviction can be based upon dying declarations (Exhibit 30 and 40) and oral dying declaration, which is not only weak piece of evidence but also inconsistent with those written statements.

6. In support of his submissions reliance is placed on following case laws.

(i) Uka Ram Vs. State of Rajasthan, 2001 All MR(Cri) 1215 (Supreme Court),

(ii) Paparambaka Rosamma & Ors., Vs. State of Andhra Pradesh, 2000 All MR (Cri) 116 (Supreme Court),

(iii) Mohammed Kunju & another Vs. State of Karnataka, 2000 All MR (Cri) 122 (Supreme Court),

(iv) Shakuntalabai wd/o. Khairuprasad Joshi & Anr. Vs. The State of Maharashtra, 2012 All MR (Cri) 1970,

(v) U.S.A. Cable Networks & Ors. Vs. State of Maharashtra & Ors., 2012 All MR (Cri) 1976,

(vi) Shantilal Haribhau Karkele & Anr. Vs. The State of Maharashtra, 2018 All MR (Cri) 1241,

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(vii) Sk. Gulab @ Gulam s/o. Sk. Ahemad Vs. The State of Maharashtra, 2018 All MR (Cri) 1250,

(viii) Subhash s/o. Ratan Chavan & Anr. Vs. The State of Maharashtra, 2016 All MR (Cri) 735,

(ix) Laxman Chandar Jadhav Vs. The State of Maharashtra, 2016 All MR (Cri) 742,

(x) Munnabee w/o. Shoukat Tadvi Vs. The State of Maharashtra, 2016 All MR (Cri) 3822,

(xi) Tulshiram Bhanudas Kambale & Ors. Vs. The State of Maharashtra, 1999 All MR (Cri) 1593,

(xii) Milind Ramchandra Gharat Vs. The State of Maharashtra & Anr., 2015 All MR (Cri) 2377,

(xiii) Lalchand Cheddilal Yadav Vs. State of Maharashtra, 2000 all MR (Cri) 1485,

(xiv) Hridaya Ranjan Pd. Verma & Ors. Vs. State of Bihar & Anr., 2000 All MR (Cri) 1490,

7. Learned counsel for accused No. 3 apart from adopting above submissions argued that prosecution has failed to lead any evidence showing, common intention being shared by this accused with co-accused. According to him for want of evidence it cannot be held that there was premeditation and meeting of mind of all the accused in order to share common intention, which ultimately makes them responsible for acts of each other. On these

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amongst other submissions he raised challenge to impugned judgment. He placed reliance on following judgments to support his contention.

(i) Jasdeep Singh Alias Jassu Vs. State of Punjab, (2022) 2 Supreme Court Cases 545,

(ii) Hardeep Singh & Ors. Vs. State of Haryana, 2008 DGLS (SC) 844,

(iii) Prashant Narayanrao Chidam & Ors. Vs. State of Maharashtra 7 Ors., 2008(1) Bom.C.R.(Cri.) 788,

(iv) Inderjit Singh and another Appellants Vs. State of Punjab Respondent, AIR 1991 Supreme Court 1674,

(v) Tarseem Kumar Appellant Vs. The Delhi Administration Respondent, AIR 1994 Supreme Court 2585.

8. On the other hand learned APP supported the judgment impugned by stating that there are no material inconsistencies in the written as well as oral dying declaration made by deceased. According to him statements are duly supported by testimony of Medical Officer, about the fit mental condition of maker. He also urged that role of accused No. 3 is major as at 3.00 am deceased would not have come out of the house except

she was called by lady and the totality of circumstances on record indicates the common intention of all accused in commission of the crime in question. On these submissions, he prayed for dismissal of appeals.

9. In the instant case since the prosecution is seeking to place reliance on statements of deceased which can now be treated as dying declarations in order to prove the guilt of accused, as the incident in question has not been witnessed by any one else. It is therefore necessary to consider the legal position in respect of acceptability of dying declaration. There are catena of judgments on the subject wherein the Hon'ble Apex Court has laid down the principles relating to recording of dying declaration and its admissibility and reliability. These principles have been summed up by the Hon'ble Apex Court in the case of ***Purshottam Chopra and Ors. Vs. State (Govt. of NCT Delhi)*** in ***Criminal Appeal No. 194-195 of 2012 decided on 07/01/2020*** as under:

*"For what has been noticed hereinabove, some of the principles relating to recording of dying*

*declaration and its admissibility and reliability could be usefully summed up as under:*

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

*ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.*

*iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.*

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

*v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.*

*vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.*

*vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.*

*viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration."*

10. By keeping in mind above the principles laid down by the Hon'ble Apex Court, evidence in the present case is scrutinized with utmost care and caution. The judgments cited on record on behalf of Accused are minutely considered.

11. As per the testimony of Nikhil (PW-1) on the date of incident at about 3.00 to 3.30 am he heard voice of his mother and therefore he came out of the house and saw that his mother on flames and accused persons were running away from the place. He claimed that while his mother was taken to the hospital in rickshaw she told him

that Manisha accused No.3 called her out of the house and Bharat accused No.1 and Dhanraj accused No.2 were standing out side of the house. She further told him that Bharat poured kerosene on her and Dhanraj lighted match stick and set her on fire.

12. Dr. Tushar (PW-6) attached to S.R.T.R. hospital, Ambajogai as a C.M.O testified about deceased being admitted to the hospital after registration of medico legal case at 5.35 am. He also claims to have intimated about the same to the constable at police chowky S.R.T.R. hospital and asked him to follow the requisite procedure. Thereafter as per the request of the police he ascertained condition of the patient and found that patient was in a position to give the statement. He, therefore, allowed the police personnel to record the statement of the patient and accordingly her statement was recorded. During recording of the statement he observed patient's condition though he was attending other patients too at that time. Before commencement of recording of

statement as well as after statement was completed, by examining the patient he made endorsement (Exhibit 33) about the condition of the patient to be fit to give statement on the statement recorded by the police personnel.

13. Narayan Jadhav (PW-8) Police Head Constable attached to S.R.T.R. hospital Police chowky claimed that at around 6.15 am he had received call from C.M.O. and he was asked to record statement of Varsha Muley who was admitted in the hospital pursuant to sustainment of burn injuries. He visited ward No. 35 of the hospital and met C.M.O. He also verified identity of Varsha and thereafter called upon C.M.O. to ascertain physical condition of Varsha to give statement. C.M.O. examined the patient and informed the witness that she was in the condition to give statement and accordingly made endorsement to that effect on the paper on which her statement was to be recorded. He further deposed about Varsha informing him about the quarrel that occurred

earlier day on account of fetching of water and narrated incident occurred on 19<sup>th</sup> April, 2015 at about 3.00 am. She further stated to the witness that at that time all three accused came to her house and Manisha accused No.3 called her out of the house and when she came out, Bharat accused No. 1 poured kerosene on her person and Dhanraj accused No.2 set her on fire with match stick. She further stated about raising cries and on hearing the same her son came out of the house and she was taken to the hospital thereafter.

14. During the cross-examination this witness admitted that there is no mention of the word "mental and physical condition" on the endorsement (Exhibit 33) made by Medical Officer. He further stated that when he visited the ward there were many relatives of the deceased near her. But there is no evidence to indicate that any one else was present at the time of actual recording of statement. He also accepted that there are corrections made in the statement. In this regard Dr.

Tushar (PW-6) was also cross-examined in order to bring it on record that the deceased was not in fit mental and physical condition to make statement. He admitted that the statement of the deceased does not bear endorsement mentioning fit condition of the patient to make statement. Though it is admitted by him that the patient sustaining 99% burn inhales high flames and large smoke but denied in each and every case trachea and respiratory system of the patient is affected. He also admitted that the burn injuries there is loss of fluid which is known as hypovolumic shock. He, however, denied present case to be of hypovolumic shock. According to this witness except for the said patient there was no any other patient who was required extra care. In spite of certain admissions given by these witnesses, the core evidence of the recording of the statement while deceased was in fit mental and physical condition is not affected. There is no suggestion made to the Police Head Constable that any relative of deceased was present near her bed to infer any tutoring. Secondly, though

corrections are noticed in Exhibit 30 but even in ordinary course, while recording statement situation may arise requiring corrections. What is relevant to note is that there is no correction made herein to suit convenience of prosecution. Pertinently, Medical Officer was present through out recording of statement and he had ascertained condition of deceased during entire period. In such facts, no doubt could be created by defence in correct recording of statement of deceased. Hence, accused cannot derive any benefit from judgment in case of ***Shakuntalabai wd/o. Khairuprasad Joshi & Anr. Vs. The State of Maharashtra*** (cited supra), as in that case dying declaration was discarded for want of certification by doctor or at least his signature on statement.

15. With regard to dying declaration (Exhibit 30) which came to be recorded on 19<sup>th</sup> April, 2015 at about 11.20 am, Balkrushna Wanjarkhedkar PW-5, Naib Tahsildar, Ambajogai deposed about visiting S.R.T.R.

hospital at 11.00 am and making inquiry with Dr. Vaibhav in-charge of ward No. 14 and requested him to examine Varsha as he wanted to record her statement. Medical officer examined Varsha and made endorsement about her consciousness and that she is in a position to give a statement. He thereafter himself ascertained and found that Varsha was in a position to give statement. According to him Varsha made a statement to the effect that on 19<sup>th</sup> April, 2015 at 3.00 am Manisha (accused No. 3) called her out of house and found Bharat and Dhanraj, co-accused, standing in front of the door of the house. She further stated that Bharat poured kerosene on her person and Dhanraj set her on fire with match stick.

16. Questions were put to this witness in the cross-examination that there is no entry of noting questions put by her to ascertain the consciousness of Varsha nor entry about the talk with Dr. Vaibhav in this regard which were not sufficient to challenge bonafides of the witness. He further admitted that date "19/4/2015" is

not reflected from Exhibit 30 i.e. statement of Varsha. He accepted to have not seen entire body of the deceased but denied the suggestions regarding impression of toe on the said statement to be not of deceased. He however candidly deposed about the statement being read over after recording to deceased and obtainment of impression of toe of the right leg on the statement.

17. To lend support to testimony of Naib Tahsildar, Dr. Vaibhav (PW-7) deposed that he was on duty in ward No. 14 as House Officer at about 11.00 am. He also deposed about Executive Magistrate meeting him and making enquiry about Varsha. According to him he examined patient and told to the Executive Magistrate that the patient is in condition to give a statement and endorsement to that effect was made on the paper. He further candidly deposed about a statement being recorded in his presence and Magistrate reading over the said statement to Varsha before obtaining impression of toe of the right leg thereon.

18. After recording of the statement also he examined patient and found her to be conscious and oriented. He identified the endorsement made on statement Exhibit 30. In the cross-examination of Medical Officer defence could not elicit any answer in order to disbelieve his testimony about examining patient before and after recording of the statement and found her to be conscious and oriented.

19. Aforesaid evidence indicates that Special Executive Magistrate not only obtained opinion of Doctor about conscious oriented condition of patient but he himself ascertained her fitness to make statement. Endorsements made by Medical Officer before commencement and after conclusion of recording of statement, shows compliance of requirement of condition precedent for a valid statement.

20. It is sought to be argued on behalf of accused that in view of inconsistencies in the statements accused

was acquitted by this Court in case of ***Shakuntalabai wd/o. Khairuprasad Joshi & Anr.*** and ***Shantilal Haribhau Karkele & Anr.*** (cited supra). It is relevant to note that in the case of ***Shakuntalabai wd/o. Khairuprasad Joshi & Anr.,*** the Medical Officer did not certify the fitness of the person making statement or even append his signature without any explanation thereon and in that circumstance the said evidence was found to be unsafe and unreliable to record conviction.

21. In case of ***Shantilal Haribhau Karkele & Anr*** (cited supra) it was found that in that case deceased was receiving treatment for four days and hence it was necessary for the prosecution to produce bed head ticket case papers. The said requirement was found necessary in order to ascertain, administration of sedatives if any during treatment as 9 hours had lapsed since the time of admission of the deceased in the hospital till recording of statement. In the present case deceased met with the incident at 3.00 am. MLC came to be recorded at 5.35

am. Intimation was given to the police at 6.15 am and at around 7.00 am statement of the deceased came to be recorded by Narayan (PW-8) Police Head Constable. Similarly Dr. Tushar (PW-6) has clearly stated that there was no other patient requiring such special treatment at the relevant time. So also, Narayan before recording the statement of deceased has ascertained and has verified her identity. Considering these set of facts in present case appellants cannot derive any benefit from the judgments referred to above.

22. Learned counsel appearing for the accused made reference to the judgment of this Court in case of ***Subhash s/o. Ratan Chavan & Anr. Vs. The State of Maharashtra*** (cited supra) to submit that considering discrepancies in two statements of deceased (Exhibit 30 and 40) with regard to previous incident, they are not reliable and cannot become basis of conviction. It is pertinent to note that in said case in two different statements deceased has attributed the act of pouring

kerosene and setting ablaze to two different accused and since it was found to be a major inconsistency in multiple dying declarations those dying declarations were not relied upon. The law on the point of multiple dying declarations states that there has to be material discrepancies and inconsistencies in those dying declarations in order to make them unreliable and not any discrepancy. It need not be emphasized that there cannot be identical/stereotype statements made by any person at two different time. The criteria which is required for the purpose of ascertaining the validity and reliability of the statement is as to whether there is consistency in respect of the material aspect of the incident in those statements. In the present we find no material inconsistency in the statement made by the deceased with regard to the incident in which she was set on fire.

23. There are oral dying declarations made by deceased in addition to written dying declarations

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recorded. Initially she informed Nikhil (PW-1) her son, about the manner in which incident has occurred. While deceased was admitted in the hospital Baban (PW-4), brother-in-law of Varsha met her and to whom Varsha made disclosure about the incident occurred at 3.00 am on 19<sup>th</sup> April, 2015. She described the incident to this witness in the same manner as was recorded in the aforesaid two dying declarations and oral dying declaration made to her son Nikhil.

24. Dr. Tushar (PW-6) during his evidence before the Trial Court has deposed about he making enquiry with the patient and on which patient told him that she was caught and taken out from her house by three persons and set her on fire.

25. It is sought to be argued on behalf of learned counsel for accused Nos. 1 and 2 that all dying declarations i.e. written dying declaration (Exhibit 30 and 40) and oral dying declaration allegedly made to Nikhil

(PW-1), Baban (PW-4) and Dr. Tushar (PW-6) are not in conformity with each other. By referring to the evidence on record it is argued that the prosecution has not proved beyond doubt that the dying declaration was true voluntary and not influenced by extraneous consideration. In this regard reliance came to be placed on the case of **Uka Ram** (cited supra). Perusal of the said judgment however shows that deceased therein was a mentally sick person and even then the prosecution did not take any precaution therein to ensure that the incident was suicidal or homicidal. Thus, in that case the probability of the deceased committing suicide was not eliminated. There also existed a doubt about the mental condition of the deceased at the time she made dying declaration. It is thus clear that the facts appearing in the said judgment are completely different than case in hand and hence said judgment has no application to the present case.

26. In the present case statement of deceased is found consistent about incident in question, at all times

i.e. while giving information to her son Nikhil and brother-in-law Baban and also the statement before Police Head Constable and Executive Magistrate as well. To some extent different version appears to have been given by Dr. Tushar when he states that the patient told him that she was caught and taken out of the house by three persons and set her on fire. This witness is a Medical Officer and in his testimony has stated that even during recording of statement he was attending other patients which indicates how busy he must be in discharging his duties as Medical Officer in the hospital. In such circumstance firstly it is not certain as to whether he deposed before the Court precisely what was being stated by the deceased. Even otherwise accepting his statement as it is except for the fact that she was caught, the other part of the statement is absolutely consistent with oral as well as written dying declarations. To our mind this statement of Medical Officer, does not create doubt about genuineness of the statements recorded of deceased.

27. It was also tried to be canvassed on behalf of the accused that the previous events mentioned in the written dying declarations as well as testimony of Nikhil are different and therefore doubt is created as to its correctness. From statement of Nikhil at the most it can be said that there was also a dispute between deceased and Bharat (accused No.1) and Dhanraj (accused No.2) over lending of amount of Rs.40,000/- and that some incident occurred prior to 19/4/2015. Narration of different prior incidents will not be sufficient to discard statements by branding them as material contradictions and inconsistencies.

28. In addition to the above evidence prosecution through Investigating Officer has proved the recovery of clothes of accused Bharat. The said recovery is assailed on the ground that it has not been proved through independent panch witnesses. There is no law that evidence of the Investigating Officer or Police Officer needs to be kept out of consideration for the reason of

being police personnel. Reliable evidence of police officer can become admissible and acted upon. In the present case record shows that attempts were made by prosecution to issue summons to the panch witnesses and as they failed to appear before the Court they were not examined. Thus, it is not the case where no attempt was made by the prosecution to prove the recovery panchnama of the clothes of the accused from independent person. The overall investigation conducted in this case is not tainted with malafide. Thus, this Court has no hesitation in accepting the evidence of Investigating Officer for the proof of the seizure of clothes of accused Bharat.

29. There is further evidence in the form of recovery of plastic Can and two burnt match sticks from the spot. As per the testimony of Baban (PW-4) according to this witness spot of incident was shown by the father of the deceased and from the said spot under spot panchnama (Exhibit 23) white colour Can with kerosene

and pieces of burn saree and match sticks were seized. Seized muddemal was sent to Chemical Analyzer and CA report (Exhibit 12) indicates presence of kerosene residues on the shirt of the accused. There is no suggestion made to the Investigating Officer about not keeping seized muddemal in sealed condition or tampering of the evidence. Thus, defence was unable to create doubt about the seizure of articles and its preservation till sending it to CA being done as per law.

30. If the dying declarations as recorded by the police personnel as well as Tahsildar are tested in view of the law settled by the Hon'ble Apex Court regarding acceptance and reliance thereon, in view of the attending circumstances we have no hesitation in holding that dying declarations (Exhibit 30 and 40) are voluntarily, truthful and reliable. In comparison with oral dying declarations as well as *interse* both written dying declaration there are no major inconsistencies in order to keep them out of consideration. Even though inherently oral dying

declaration is a weak piece of evidence but there is no legal bar to use the same for the purpose of corroboration to other material evidence on record. There is further evidence against accused No.1 in the form of seizure of his clothes stained with kerosene and the match stick used by accused No. 2 to set deceased ablaze. Finally fact regarding presence of accused at the spot at the time of incident is further affirmed and gets strengthened by deposition of Nikhil (PW-2) who had seen accused fleeing away from the spot. Pertinently, case of accused is of complete denial without offering explanation to incriminating material against them.

31. Learned counsel for accused No. 3 submitted that even if evidence led by the prosecution is accepted as it is, there is nothing to indicate that there was meeting of mind between accused No. 3 and co-accused and that no inference can be drawn of common intention of this accused in killing the deceased. He placed reliance on the case of ***Jasdeep Singh Alias Jassu Vs. State of***

**Punjab** (cited supra) in order to contend that in absence of any such evidence conviction of the accused No. 3 is not sustainable. By referring to the spot panchnama showing seizure of Can it is submitted that the Can seized from the spot was not a peculiar Can ordinarily used for storing kerosene. It is submitted that there is no evidence to indicate that accused No. 3 had knowledge about kerosene being brought to the spot by accused No. 1 and accused No. 2 being there with match stick. In absence of this evidence according to him merely because accused No. 3 had called deceased out of house no inference can be drawn about she sharing common intention with the co-accused to set deceased ablaze. The said submission is countered by learned APP by pointing out that there is overtact on the part of this accused in calling deceased out of the house and thereby she facilitated the commission of act of setting her on ablaze by the co-accused. This according to him is more than sufficient evidence to show common intention shared by all the accused for committing crime in question.

32. No doubt at first blush substance appears in the contention of learned APP that there was overtact on the part of accused No. 3 of calling deceased out of house and considering the fact that she did the same at wee hours may suggest her conscious participation in the crime. However, at the same time from looking at the very set of facts from different angle demonstrates that another inference also can be drawn therefrom.

33. It is settled position of law that from the evidence on record if two different views/inferences are possible to be drawn, the one in favour of the accused must be accepted. In this regard reliance can be placed on the judgment of Hon'ble Apex Court in the case of ***K. Gopal Reddy vs State Of Andhra Pradesh reported in 1979 AIR 387, 1979 SCR (2) 265***, it is held that,

*"It stems out of the fundamental principle, of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and*

*remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reason."*

34. From the evidence on record though it can be said that accused No. 3 has committed overtact by calling deceased out of house, however, that would not be sufficient to attribute her knowledge to set deceased on fire. It is necessary to take note of the fact that the plastic Can seized from the spot is not the one typically/ordinarily used to store kerosene oil. Secondly,

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this accused is not member of family of co-accused nor any evidence is led to show their previous meeting to share common intention. Ultimately burden is on prosecution to prove guilt of each accused beyond shadow of reasonable doubt. It would be mere speculation in absence of cogent evidence on record to hold that she shared common intention with co-accused to set her ablaze. No conviction of this accused therefore is permissible on speculation sans concrete evidence. Accused No.3 therefore deserves to be let off, by extending benefit of reasonable doubt.

35. Scrutiny of evidence on record leads to the finding that prosecution has proved guilt of accused Nos. 1 and 2 beyond reasonable doubt and their appeal deserves rejection. Whereas for want of conclusive proof of guilt of accused No. 3 she needs to be acquitted. Hence the order.

**ORDER**

(i) Criminal Appeal No. 499 of 2016 is dismissed.

- (ii) Criminal Appeal No. 807 of 2022 is allowed.
- (iii) The impugned judgment of conviction and order of sentence dated 22<sup>nd</sup> July, 2016 in Sessions Case No. 58 of 2015 passed by the Additional Sessions Judge, Ambajogai, Dist. Beed to the extent of accused Nos. 1 and 2 stands confirmed.
- (iv) The impugned judgment of conviction and order of sentence dated 22<sup>nd</sup> July, 2016 in Sessions Case No. 58 of 2015 passed by the Additional Sessions Judge, Ambajogai, Dist. Beed to the extent of accused No.3- Manisha Sampati Muley is hereby set aside. Accused No. 3-Manisha Sampati Muley stands acquitted.
- (v) The accused No.3-Manisha Sampati Muley be released forthwith, if not required in any other case.
- (vi) Fine amount deposited by accused No. 3 Manisha Sampati Muley, if any, be refunded to her.

**(R. M. JOSHI, J.)**

**(R. G. AVACHAT, J.)**