

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

CRIMINAL APPEAL NO. 614 OF 2014

1. Janabai Vasant Raut,
age: 32 years, Occ: Housewife,
R/o Dewla Punarwasan,
Selu, District Parbhani.
2. Arjun Anjiram Raut,
age: 28 years, Occ: Washerman,
R/o Shinde-Takli; at present
R/o Dewla Punarwasan,
Selu, District Parbhani.

Appellants
(Orig. accused
Nos. 2 & 9)

Versus

The State of Maharashtra,
through Selu Police Station,
Taluka Selu, District Parbhani.

Respondent

.....
Mr. S. G. Ladda, advocate for the appellants.
Mr. R. D. Sanap, APP for Respondent-State.

.....

CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

.....

RESERVED ON : 3rd December, 2021.
PRONOUNCED ON : 17th January, 2022.

JUDGMENT (Per Sandipkumar C. More, J.) :

1 The present appellants, who are original accused nos. 2 and 9, have preferred this appeal against the judgment and order dated 30.08.2014 in Sessions Trial No 32/2013, passed by the Extra-Joint *Ad hoc* Additional Sessions Judge, Parbhani, (hereinafter referred to as “the learned trial Court”). Under the impugned judgment, present appellants – accused have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay fine of Rs.1000/- each, in default, to suffer further imprisonment for three months.

2 Initially, there were 9 accused, including present appellant no.2 i.e. husband of deceased Sheetal, his parents, three brothers and their respective wives. All of them were charged for the offence punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. However, the learned trial Court has convicted only present appellants, being accused nos. 2 and 9 under Section 302 read with 34 of IPC.

3 According to the prosecution, Sheetal, who was wife of present appellant no.2, was admitted to Government Hospital, Parbhani on account of 100% burn injuries. Dr. Shekhar Deshmukh i.e. the Medical Officer attached to the said hospital, after having admitted Sheetal in the burnt patients' ward, issued MLC letter to the Police Out-Post within the premises of the said hospital. Police Head Constable Mr. Kurundkar of the said Police Out-post, visited the said ward along with Dr. Deshmukh and after seeking opinion of the doctor about the condition of Sheetal, recorded her statement. As per the story narrated by Sheetal, it was disclosed that she was residing at Selu and prior to 25.09.2012, she had gone to the place of her matrimonial home at Shinde Takali. At that time, present appellants and other accused subjected her to ill-treatment on the count that they were not offered feast in the nature of "*dhonde jewan*" and that she did not brought money from her parental house. On 24.09.2012, at about 9.00 p.m., when the present appellants and husband of appellant no.1 were present in the house, appellant no.1 poured kerosene on her person and appellant no.2 threw ignited matchstick on her person and

set her ablaze. When she started raising shouts, appellant no.2 initially went out but then in apprehension that the house might catch fire, started extinguishing the said fire. According to Sheetal, other accused had also subjected her to physical and mental ill-treatment as she failed to bring money from her parental house and, as such all the accused attempted to commit her murder. On the basis of the said statement, Crime No. 162/2012 was initially registered in Selu Police Station for the offences punishable under Sections 498A and 307 read with Section 34 of the Indian Penal Code. After recording said statement, Police Head Constable Mr. Kurundkar also made contact with Naib Tahsildar Mr. Kolgane and requested him to record dying declaration of Sheetal. Said Naib Tahsildar immediately rushed to the hospital and on receiving request letter from Police Head Constable Mr. Kurundkar, recorded dying declaration of Sheetal after she was examined by Dr. Deshmukh. However, just after recording of second dying declaration, Sheetal succumbed to the burn injuries. After the inquest *panchanama* was drawn over her dead body, Dr. Kala i.e. P. W. 1 conducted autopsy on the dead body of Sheetal between

10.15 a.m. and 11.15 a.m. on 25.09.2012. It was transpired that Sheetal died due to “hypovolemic shock due to 100% burns”.

4 A. P. I. Rathod i.e. P. W. 2, attached to Selu Police Station, took over the charge of investigation and prepared spot *panchanama* and also seized articles, including partially burnt clothes, match box, matchstick and a kerosene container from the spot. He then arrested all the accused under separate arrest *panchanamas* after receiving other papers from Police Head Constable Mr. Kurundkar. The muddemal articles were sent to Chemical Analyser, Aurangabad, through Police Head Constable Mr. Chaure with a covering letter. On completion of the investigation, the Investigating Officer - A. P. I. Rathod submitted charge sheet against all the accused persons under the aforesaid Sections.

5 The learned Judicial Magistrate, First Class, Selu committed the case to the Court of Sessions, Division Parbhani, as the offence under Section 302 of the Indian Penal Code was exclusively triable by the Sessions Court.

The learned trial Court then framed charge as per Exhibit-36 against all the accused for the offence under Sections 302, 498-A read with Section 34 of the Indian Penal Code.

6 In order to establish the charge against accused persons, the prosecution examined in all nine witnesses, out of which, P. W. 1 Dr. Sandip Jaykumar Kala is the Medical Officer of Civil Hospital, Parbhani, who conducted *post mortem* over the dead body of Sheetal. According to him, Sheetal sustained 100% burn injuries and, therefore, her death occurred due to hypovolemic shock. He also opined that the burn injuries were *ante mortem* and the same were possible due to use of kerosene. The *post mortem* report is at Exhibit-51.

7 The next witness i. e. P. W. 2 Mr. Ramdas Kondiba Kolgane is the Naib Tahsildar who has recorded dying declaration of Sheetal as per Exhibit-54. He also proved the contents of letter dated 25.09.2012 under which he sent the said dying declaration to the Police Out-Post at Civil Hospital, Parbhani. The third witness i.e. P.W. 3 Mr. Dnyaneshwar

Trimbak Zol appears to be neighbour of accused, who refused to support the case of the prosecution. He is also a *panch* witness to the spot *panchanama* Exhibit-59 and has proved contents of the same.

8 P.W.4 Dr. Shekhar Shamrao Deshmukh is the Medical Officer, attached to Civil Hospital, Parbhani on 25.09.2012, who had an occasion to examine Sheetal before and after recording of her dying declarations. The first dying declaration is at Exhibit-64. This witness has also proved the contents of the letters dated 25.09.2012 at Exhibit-65 and Exhibit-66, which were sent to Police Station Selu.

9 The next witness i.e. P. W. 5 Laxman Dattarao Bansode is the maternal uncle of deceased Sheetal and he has deposed about the ill-treatment to Sheetal at the hands of all the accused and also deposed as to how Sheetal told him about the cause of her burn injuries. P. W. 6 Kalpana Balasaheb Shinde is the mother of deceased Sheetal and she has also stated like P. W. 5 as to how Sheetal was ill-treated and ultimately burnt.

10 P. W. 7 A. P. I. Rathod is the Investigating Officer whose evidence we have discussed earlier in this judgment. He has deposed about certain documents inclusive of letters, forms and C. A. report at Exhibit-92, Exhibits-93 to 101, letter to C. A. Exhibit-102 and C. A. report Exhibit-103. The next witness of prosecution i. e. P.W.8 Police Head Constable Anand Dhondopant Kurundkar, is the person, who had recorded first dying declaration of deceased Sheetal. He has deposed about the entire procedure of recording the first dying declaration. The last witness of prosecution i.e. P.W. 9 Police Head Constable Mr. Sudhakar Bhagwan Chaure, is the person, who had carried the *muddemal* articles to the C.A., Aurangabad, under the orders of the Investigating Officer Mr. Rathod. The prosecution then, under the pursis Exhibit-111 closed the evidence.

11 The learned trial Court recorded statements under Section 313 of the Code of Criminal Procedure of all the accused. The defence of accused, as appearing from their statements and manner of cross examination, is of total

denial. Thereafter the learned trial Court, on considering the entire material placed before it, has convicted the present appellants, as mentioned above and acquitted the remaining accused.

12 The learned Counsel for the appellants vehemently argued that the conviction of present appellants recorded by the trial Court, though is based upon circumstantial evidence and two dying declarations, but those dying declarations are clouded with doubtful circumstances and cannot be believed as Sheetal was not in a fit condition to state so. The learned Counsel has pointed out so many discrepancies and lacunae in the evidence of prosecution while recording those dying declarations. According to him, no medical papers were brought on record to support the evidence or opinion of the Medical Officers. Further, when the accused did not inform that deceased Sheetal was admitted in the hospital, how her maternal uncle and mother directly went to see Sheetal in the hospital. He further submitted that the dying declarations, upon which the prosecution case rests, are doubtful and not free from tutoring. The learned Counsel for the appellants, in

addition to his submissions at bar, also filed written notes of arguments discussing the citations upon which he placed reliance during the course of arguments. The citations relied upon by the learned Counsel for the appellants are as under:

- (a) **Manohar Dadarao Landge Vs. State of Maharashtra**, (2000) 2 Mah L J 3;
- (b) **Shaikh Bakshu and others Vs. State of Maharashtra**; (2007) 11 SCC 269;
- (c) **State of Madhya Pradesh Vs. Dal Singh and others**, (2013) 14 SCC 159;
- (d) **Surinder Kumar Vs. State of Haryana**, (2011) 10 SCC 173;
- (e) **Ganpat Bakaramji Lad Vs. State of Maharashtra** 2018 (2) Mah L J 786;
- (f) **Abdul Riyaz Abdul Bashir Vs. State of Maharashtra**, 2012 ALL MR (Cri) 2188;
- (g) **Dadarao and others Vs. State of Maharashtra**, in Cri. Appeal No. 221 of 2014;
- (h) **Mannu Raja and Another Vs. The State of Madhya Pradesh**, (1976) 3 SCC 104;
- (i) **Balakram Vs. State of U.P.**, (1975) 3 SCC 219;

(j) **K. Ramchandra Reddy and Another Vs. The Public Prosecutor**, (1976) 3 SCC 618;

(k) **P. Mani Vs. The State of T. N.**, (2006) 3 SCC 161;

(l) **The State of Maharashtra Vs. Sanjay Rajhans**, (2004) 13 SCC 314;

(m) **Sanjay Sakharam Ahire Vs. The State of Maharashtra**, (2013) SCC OnLine BOM 1390;

(n) **Suresh Arjun Dodorkar Vs. The State of Maharashtra**, 2005 ALL MR (Cri) 1599;

(o) **Bhagirath Bhaurao Kanade Vs. State of Maharashtra**, 1997(2) Mh.L.J.;

(p) **Sau Kamlabai Haribhau Lastane Vs. State of Maharashtra**, (2019) 2 AIR Bom R (Cri) 501;

(q) **Madhukar Shrimant Mhaske and another Vs. The State of Maharashtra**, 1998 SCC OnLine Bom 186;

(r) **Laxman Vs. State of Maharashtra**, (2002) 6 SCC 710;

(s) **Manohar Dadarao Landge Vs. State of Maharashtra**, 2000(2) Mh.L.J. 3;

(t) **State of Pubjab Vs. Gain Kaur and Another**, 1998 SCC (cri) 942;

13 On the contrary, the learned A. P. P. vehemently argued that the conviction recorded against the present appellants by the learned trial Court is based upon the dying declarations which are free from every clouding circumstances. According to him, there was no possibility of tutoring to Sheetal at the time of recording her dying declarations. He further submitted that the kerosene bottle was found on the spot and the C. A. report is also suggestive that the appellants have set ablaze deceased Sheetal. Thus, in short, he submitted that the Medical Officer has correctly opined about the fit condition of deceased at the time of giving statements about cause of death of Sheetal and the same inspires confidence. He also relied upon the following judgments by submitting written notes.

(i) **Yousuf Badshah Shaikh Vs. State of Maharashtra** (Criminal Appeal No. 498 of 2014, decided on 22.11.2021, by the Division Bench of this Court)

(ii) **Purshottam Chopra & another Vs. State (Govt. of NCT Delhi)**,
2020 AIR (SC) 476;

(iii) **Laxman Vs. State of Maharashtra**, AIR 2002 SC 2973;

14. We have carefully gone through the submissions made before us by the learned counsel for appellants and the learned APP. We have also perused grounds raised by the appellants in the appeal along with record and proceedings and the case laws cited by rival parties.

15. It is the case of prosecution that the appellants and other co-accused subjected Sheetal to cruelty and on the fateful day set her ablaze by pouring kerosene on her person. Though it has been revealed that the defence of the appellants accused is of total denial, but from the suggestion given to P.W.3 Dnyaneshwar Trimbak Zol, who appears to be a neighbour of appellant no.2, it appears that the appellants want to show that Sheetal in the fit of anger poured kerosene on her person and set herself ablaze. Thus, the appellants-accused have come with a suicidal case. Admittedly from the evidence of P.W.1 Dr. Sandeep Jaykumar Kala, who had conducted post-mortem over the dead body of Sheetal, it is clearly evident that she died due to hypovolemic shock due to

100% burn injuries. Thus, it is to be found here whether her death was caused by way of suicide or by way of homicide owing to the act of the appellants.

16. The prosecution story is prominently based on two dying declarations recorded by P.W.2 Ramdas Kondiba Kolgane, who is a Naib Tahsildar and P.W.8 Anand Dhondopant Kurundkar, who is a Police Head Constable. The first dying declaration was recorded by P.W.8 at the earliest opportunity, is at Exhibit-64. Though the said dying declaration appears to be recorded in the manner in which police normally record statements of witness under Section 161 of Cr.P.C. during investigation but as Sheetal died with in short period after recording the same and it is related to cause of her death, the same has to be treated as dying declaration. On perusal of the said dying declaration Exhibit-64, it appears that Sheetal had told P.W.8 that she was subjected to ill-treatment at the hands of present appellants as well as at the hands of other accused on account of not providing them "*dhonde jewan*" and not given dowry of Rs.25,000/- in the marriage. She further stated that on

24/09/2021 when she was in house at Shelu, appellants along with co-accused Vasantrao, who is husband of appellant no.1, were present there and at that time appellant no.1 poured kerosene on her and appellant no.2 ignited her with match stick. She has also stated that when her Saree caught fire, she started shouting, but her husband Arjun i.e. appellant no.2 ignored her and sat out side. However, the appellant no.2 husband in apprehension that house might catch fire, tried to extinguish her. P.W.8, who recorded such statement or the first dying declaration Exhibit-64 has categorically deposed that on the day of incident i.e. 24/09/2021 at about 23.45 hours he was attached to Police Station Out post, which was within the premises of Government Hospital at Parbhani and he had received the MLC from the Medical Officer, which is at Exhibit-66. He has further deposed that as the said MLC was in relation to a woman, who had sustained cent percent burn injuries he thought it necessary to record her statement. According to him, he took the Medical Officer to Burn-Ward and asked relatives of Sheetal to stay out side while recording the statement and then recorded the said dying declaration

Exhibit-64. He has specifically stated that he started recording the same only on confirming through Dr. Shekhar Deshmukh i.e. P.W.4 that Sheetal was in fit state of mind for making the statement. It appears that after recording her statement, he read over the same to Sheetal and found to be accepted by her being recorded correctly. He also obtained thumb impression of her right hand and signed the same. He has also taken care of securing remarks of doctor about fit condition of Sheetal for giving statement before and after recording the same. On perusal of said dying declaration Exhibit-64, two endorsements of Medical Officer appear thereon. First before recording and second after concluding the same.

17. Learned counsel for the appellants strongly contended that in the said dying declaration Exhibit-64 it is nowhere mentioned that it was read over to the deceased. However, P.W. 8 has categorically deposed before the court that the said statement was read over to the deceased and she had also accepted it being recorded correctly and as per her say. So we do not find any substance in such

submissions made on behalf of the appellants. On perusal of cross-examination of this P.W. 8 though this witness has admitted about serious condition of Sheetal while recording the statement, but it appears that the said dying declaration Exhibit-64 was recorded by securing the fit mental condition of the deceased at the hands of P.W.4 Dr. Shekhar Deshmukh.

18. So far as second dying declaration is concerned, it appears that it was recorded soon after the first dying declaration Exhibit-64. P.W.8 has also stated that after recording first dying declaration of the deceased he gave message to P.W.2 Ramdas Kondiba Kolgane, who was the then Naib Tahsildar and was acting as an Executive Magistrate at the relevant time for recording dying declarations as per procedures. On perusal of evidence of this P.W.2 it reveals that he in the intervening night of 24/25-09-2012 received telephonic message from Police Outpost at Police Station, Parbhani for recording dying declaration of the deceased having burn injuries. Accordingly, he received written letter at about 00.45 a.m. on 25/09/2012 and

thereafter, he approached concerned Medical Officer P.W.4 Shekhar Deshmukh and then proceeded to Burn-Ward with him. The evidence of this witness also shows that he had secured medical opinion from P.W.4 Shekhar Deshmukh as to whether the deceased was capable of making statement and on examination by P.W.4 Dr. Shekhar Deshmukh, it was found that Sheetal was capable of making statement. As such, he proceeded to record the dying declaration of Sheetal, which is at Exh.54 and appears to be in printed form. On perusal of the same, it appears that deceased Sheetal while making said statement had told P.W.2 Ramdas that appellant no.1 poured kerosene on her person and her husband appellant no.2 set her ablaze with the help of match stick. It was also told by the deceased Sheetal that the appellants were asking for money to be brought from her father and that they were not honoured with "*dhonde jewan*". The deceased specifically stated the time of incident being took place at 9.00 p.m. on 24/09/2012. Further the time of starting of recording the said dying declaration being at 00.55 a.m. and time of finishing the same being at 1.05 a.m. are also mentioned on the said dying declaration Exhibit-54. This

witness i.w. P.W.2 has also deposed that after recording the said dying declaration Exhibit-54, he obtained thumb impression of Sheetal and also put his signature thereon and then handed over the same in closed envelope to the Police Out-Post in the said hospital. On perusal of cross-examination of this witness, it is evident that the appellants through their advocate tried to bring on record the fact that at the time of alleged recording of the said dying declaration Exhibit-54 Sheetal was not at all in a position to give the statement and the same was in fact prepared at the instance of relatives of the patient and P.W.8 Anand Kurundkar. However, P.W.2 has denied such suggestion flatly. He also stated that while recording the said dying declaration, P.W.8 had stayed out side and no one from the relatives of Sheetal, were present along with him.

19. Further the evidence of P.W.4 Dr. Shekhar Deshmukh, who had attended and verified the physical and mental condition of Sheetal while recording the aforesaid dying declarations, indicates that he had examined Sheetal prior and after recording of those two dying declarations and

found that she was in her senses though her condition was poor and having pains. Further testimony of this witness appears to be true version as he had taken due care of examining Sheetal in respect of her mental fitness for making such statements. Even in the cross-examination, nothing suspicious has been brought on record by the defence side. Though learned counsel for the appellants before the trial court tried to suggest that due to cent percent bun injuries, Sheetal was not in a position to make statements as she was also given sedative, but this witness denied the same and remained firm on his opinion that during the course of recording both the dying declarations Sheetal was in senses and capable of making statements. Though this witness appears to have deposed before the learned trial court without going through the medical papers, but his testimony appears reliable even in absence of the same.

20. Thus, considering all the aforesaid aspects, we find that both the dying declarations i.e. Exhibit-64 and 54 though recorded in different style, are consistent on material

parts and free from any clouding circumstances which may render the same doubtful.

21. In the case of *Purshottam Chopra and another vs. State (Govt. of NCT Delhi)*, 2020 AIR (SC) 476 relied upon by the learned APP for respondent-State the Supreme Court has discussed the principles laid down by the Constitutional Bench in the case of *Laxman vs. State of Maharashtra*, AIR 2002 Supreme Court 2973 and by considering the observations in various earlier cases relating to dying declarations and its admissibility and reliability, has observed in para no.21 as follows :

- "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".*

22. On going through the aforesaid principles, it has been made clear by the Supreme Court that a dying declaration could be the sole basis for conviction even without any corroboration, provided that it inspires

confidence. Further it has also been observed that no certain prescribed format or procedure for recording dying declaration is required but only the thing which is to be considered that the person recording a dying declaration must be satisfied that the maker is in fit state of mind and is capable of making the statement. Further it is also held that even recording of such dying declaration at the hands of Magistrate is not absolutely necessary. It is most important to note here that the Supreme Court has also observed that in burning cases the percentage and the degree of burns could not shake credibility of dying declaration and the decisive factor would be a quality of the evidence about the fit and conscious state of the declarant to make the statement. Thus, ignoring the technical flaws, the Supreme Court has guided that if 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. In the instant case also the evidence of P.W.8 Anand Kurundkar, who recorded first dying declaration, evidence of P.W.2 Ramdas Kolgane- Naib Tahsildar, who recorded second dying

declaration and evidence of P.W.4 Dr. Shekhar Deshmukh-Medical Officer, who certified the fact that Sheetal was in fit condition for making statement, definitely inspire confidence in the truthfulness of both the aforesaid dying declarations Exhibit-64 and 54.

23. Though we find the aforesaid dying declarations being trustworthy and reliable for recording the conviction against the present appellants for the offence punishable under Section 302 of IPC, but the other circumstantial evidence on record also indicates the guilt of accused as the articles found on the spot of incident as per the spot panchanama definitely incriminates appellants. Moreover, the C.A. Report at Exhibit-103 also corroborates the version of the deceased in her dying declarations as kerosene was detected on the partially burnt clothe pieces of the deceased and other articles like paper pieces, metallic locket with black beads and hair. Even the partially burnt saree and blouse in a cloth parcel also detected positive for the presence of kerosene thereon. P.W.3 Dnyaneshwar Trimbak Zol, who is the neighbour of the appellants and also the panch witness

over the spot panchanama, has also deposed about the presence of the aforesaid articles on the spot of incident, which had been sent to the chemical analysis. Further it is also important to note here that in all three persons mainly appellants and husband of appellant no.1 were present at the time of incident on the spot of incident as stated by the deceased in her dying declaration. However, out of those three persons, the deceased only stated about role of these appellants being the persons who set her ablaze. Had it been a tutored case, then the deceased could have implicated all three persons or other accused persons also, but she has specifically named only the appellants being the persons who committed the crime. This is the most important circumstance we found against the appellants.

24. Learned counsel for the appellants / accused has also relied on various citations mentioned below for rendering the aforesaid dying declarations being doubtful:

I) In **Criminal Appeal No. 221 of 2014 (Janabai and other vs. State of Maharashtra)** it has been observed by this court as under :

"Para No.7 : Specific circumstances must be put to the accused under Section 313 of Cr.P.C.

Para No.19 and 20 : Magistrate who claims to have recorded the dying declaration must record what questions he had put to the declarant earlier to the recording of dying declaration. If not so done, effect is fatal".

However, in view of the principles laid down in the case of **Purshottam** (*supra*) there is no specific format required for dying declaration and the test about the truthfulness of such dying declaration is only that it must inspire confidence and satisfy the court being the true version of deceased.

II) In **Mannu Raja and another vs. The State of Madhya Pradesh, (1976) 3 SCC 104**, it has been observed as under :

"Para No.9 : Recording of dying declaration by Investigating Officer is deprecated.

Para No.11 : If I.O. thought that injured was in precarious condition he should have requisition service of Magistrate".

In **Balakram vs. State of U.P. (1975) 3 SCC 219**, it has been observed as under :

"Para No.53 : Recording of dying declaration by Investigating Officer is deprecated because of Investigating Officer is always overzealous to see success in the case. It is not prudent to keep reliance on the dying declaration recorded by Investigating Officer".

Though it is observed in the aforesaid judgments that dying declaration recorded by Investigating Officer is not a proper procedure but again in view of the principles laid down in the case of **Purshottam** (*supra*) the dying declaration recorded by Investigating Officer cannot be discarded merely because the Investigating Officer is always overzealous to see success in the case. There is no rule of law that in every case dying declaration recorded by police personnel, needs to be discarded with prejudiced mind. Moreover, in the instant case though the first dying declaration is recorded by police personnel but the Naib Tahsildar / Executive Magistrate has also recorded the subsequent dying declaration and both these dying declarations appear to be consistent on material aspect. As such the aforesaid judgments are not helpful to the appellants.

III) In **K. Ramchandra Reddy and another vs. The Public Prosecutor, (1976) 3 SCC 618**, it has been observed as under :

"Para No.6 : Dying declaration is at par like other piece of evidence.

Para No.7 : When there were several persons gathered and attended the deceased at the spot yet did not name the accused is a serious infirmity.

Para No.11 : Patient did not disclose about incident to the doctor at hospital is also a serious infirmity.

Para No.12 : Magistrate must put direct questions to the injured regarding his / her mental state. Omission to do this is a serious flaw. Accused deserves to be given benefit".

However, in the instant case there were no several persons gathered while recording the dying declarations. On the contrary, it appears that P.W.8 Anand Kurundkar had recorded the first dying declaration of the deceased Sheetal at the earliest opportunity and that too after securing the fit condition of the deceased to make such statement. He has also categorically deposed that when he along with P.W. 4 Dr. Shekhar Deshmukh went to record the statement of the deceased, he asked all the relatives to stay out while

recording the same. Further as mentioned above, no specific format is required for recording dying declaration as per the principles laid down by the Supreme Court. Thus, the observations in the aforesaid case is not at all applicable to the present case.

IV) In the case of **P. Mani vs. State of T. N. (2006) 3 SCC 161**, it has been observed by Supreme Court as under :

"Para No.3 : The accused himself taking injured to the hospital.

Para No.11 : This conduct of the accused is not unfair more particularly when the accused took part in dowsing flames.

Para No. 12 : If accused had intended to kill the deceased then he would not have taken the injured to hospital.

Para No.13 : If the oral evidence of the witness is contrary to that appearing in the dying declaration, then such oral evidence shall prevail of the witness.

Para No. 14 : When suspicion arises about correctness of dying declaration on the basis of other material / evidence then the dying declaration cannot be made sole basis for conviction".

Learned counsel for the appellants / accused mainly relied on aforesaid observations since P.W.3 Dnyaneshwar did not utter any word that the deceased had made any statement involving the accused. On the contrary, this P.W.3 Dnyaneshwar stated that appellant no.2 i.e. husband of deceased Sheetal and original accused no.9 had in fact tried to douse the flames of Sheetal at the time of incident. Admittedly, P.W.3 Dnyaneshwar who appears to be neighbour of the appellants, has stated so. However, the dying declaration at Exhibit No. 64 itself has given reasons as to why appellant no.2 went there for dowsing the flames. It is specifically stated by the deceased in the dying declaration Exhibit-64 that appellant no.2 only went to douse her fire in apprehension that his house might catch fire. She has specifically stated that after setting her ablaze, appellant no.2 had in fact went in outer room and sat there but due to aforesaid apprehension he later on came to douse her flames. It is to be noted here that P.W. 3 Dnyaneshwar had never an occasion to see the aforesaid conduct of appellant no.2 as he only came to the spot later on and after hearing shouts of the deceased. Further, when both the dying declarations are

found consistent throughout, then the act of appellants of taking the deceased to the hospital in injured condition cannot be considered as a favourable circumstance to them. For this reason, we are not in accordance with the aforesaid observations in the above cited case for giving any benefit to the appellants or to discard the dying declarations on record.

V) In case of **State of Maharashtra vs. Sanjay Digambarrao Rajhans**, (2004) 13 SCC 314, it has been observed as under :

"Para No.5 : When motive is not established.

Para No.8: Accused did not flee but took injured to the hospital and himself remained in the hospital.

Para No.10: Dying declaration must be free from even a slightest doubt. Learned counsel for the appellants contended that in that dying declaration, in the case law, there was no stamp ink. Similarly, in the inquest or P. M. Report in the present case also there is no stamp ink on thumb found. This would create a serious doubt.

Para No. 16 : If the story of the prosecution about homicide and story of accused about suicide both unacceptable then benefit must be given to the accused.

Para No.18 : Person whom oral dying declaration is made if not reports the matter to police, his conduct

is not natural, therefore, he cannot be believed. In the present appeal in hand P.W. 5 and 6 though reached the patient about 11.30 p.m. (i.e. much prior to attending of patient by P.W. 8 Kurundkar, P.H.C.) did not report the matter allegedly heard from the injured, to the police would make both the said witness unreliable".

In view of the principles laid down in the case of **Purshottam** (*supra*) by Supreme Court the aforesaid observations cannot be made applicable to the present case as we have already come to the conclusion that both the dying declarations made by the deceased appear truthful. Further merely because the accused did flee from the spot but took the injured to the hospital, cannot be considered favourably to them.

VI) In case of **Sanjay Sakharam Ahire vs. The State of Maharashtra, 2013 SCC OnLine Bom 1390**, it has been observed as under :

"Para No.5 : Parents / relatives were found to be in continuous company of the patient till the death would make a base to presume that there is likelihood of tutoring".

Learned counsel for the appellants has expressed the view that when the deceased Sheetal was in company of her relatives till her death, a presumption can not be overruled that both the dying declarations made by her are the result of tutoring. However, we have already mentioned earlier that P.W.8 Anand Kurundkar, Police Head Constable had specifically asked all the relatives to stay out while recording the dying declaration and therefore, the above observations are not helpful to the appellants.

VII) In case of **Suresh Arjun Dodirjar (Sonar) vs. State of Maharashtra, 2005 ALL MR (Cri) 1599**, it has been observed as under :

"Para No.7, 8 and 9 : When there are two dying declarations which slightly differ about the incident and there is interse variance between such two dying declarations about the prelude to the incident and the incident, then the absence of prelude in the 2nd dying declaration attain great importance and the common thread which is about the actual incident appearing in both the dying declarations cannot be of any use because the dying declaration has to pass all tests of reliability not only about the incident but also prelude to the incident.

Para No. 11 : Oral dying declaration- if the witness does not narrate the incident immediately to the police or anybody else such conduct, his non reporting about the incident to police makes him unreliable".

We are not inclined to rely on aforesaid observation mainly because we have already found both the dying declarations in this context reliable, trustworthy and truthful.

VIII) In the case of **Bhagirath Bhaurao Kanade vs. State of Maharashtra, (1996) SCC OnLine Bom 316**, it has been observed as under :

"Para No. 20 : When there is a case about history given to and recorded in medical case papers and also about recording of dying declaration by the Magistrate then both documents are important and if there is variance then the dying declaration is to be discarded. In the present appeal the prosecution deliberately withheld the medical case papers. This creates a serious doubt. Therefore, adverse inference needs to be drawn against the prosecution and accused needs to be acquitted".

Learned counsel for the appellants has strongly relied on aforesaid observations mainly because P.W.4 Dr.

Shekhar Deshmukh has admitted in his cross-examination that he did not bring medical papers at the time of deposing on dying declaration recorded in his presence, even though it was specifically asked in the witness summons to him. However, the Supreme Court in the case of **Purshottam** (*supra*) has already observed that a dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court. Here in this case P.W.4 Dr. Shekhar Deshmukh has categorically deposed that he had found deceased Sheetal in her senses and capable of making statement prior and after recording of both the dying declarations. Moreover, this witness has also stated as to which medicines were given to Sheetal after she was brought in the hospital. Moreover, nothing has been brought on record in the cross-examination of this witness as well as in the cross-examination of persons who recorded the dying declarations which can produce a severe dent in the prosecution story. Under such circumstances, we do not find any reason to doubt the testimonies of the aforesaid witnesses merely because P.W.4 Dr. Shekhar Deshmukh did

not bring the medical papers regarding treatment of deceased at the time of his deposition.

IX) In the case of **Sau. Kamlabai Haribhau Lastane vs. State of Maharashtra Through P.S.O. Nandgaon Khandeshwar, (2019) 2 AIR Bom R (Cri) 501**, it has been observed as under :

"Para No. 25-27 : Dying declaration on printed format not safe to be accepted.

Para No. 28 : Magistrate himself put questions to the injured in order to ascertain mental state of patient and he must record such questions.

Para No. 29 : It is unsafe to pick and choose one dying declaration at the exclusion of other. Improbable mars the correctness and truthfulness of the dying declaration.

Para No. 34 : Prosecution if does not produce treatment papers the court cannot form opinion on the basis of certified given by doctor on the dying declaration or about the dying declaration such effect is fatal".

In the case of **Madhukar Shrimant Mhaske and another vs. The State of Maharashtra, 1998 SCC OnLine BOM 186**, it has been observed as under :

"Para No. 36 : Minor inconsistencies in the dying declaration has to be considered. Thumb impression / T.I. must be endorsed. If there is no endorsement below the T.I. about whose it is then the dying declaration has to be rejected".

We do not find the aforesaid observations applicable to the present case mainly because no specific format is required for recording the dying declaration. However, even it is not necessary that dying declaration must be recorded by a Magistrate in every case. Only it is to be seen that it inspires confidence.

X) In the case of **Laxman vs. State of Maharashtra, (2002) 6 SCC 710** it has been observed as under :

"Para No. 2 : If there is material on record indicating that the deceased was fully conscious and was capable of making statement then there is no need of endorsement by doctor.

Para Nos. 4 and 5 : Magistrate / person recording statement of the deceased should depose indicating the questions which he had put to the patient and the answers to such questions and only then a satisfaction by the court could be arrived and only then need for medical certificate is exempted.

Para No. 3 : Although it is the law that the dying declaration is admissible yet court has to exercise great caution in giving weight to such dying declaration. Dying declaration is a species of evidence and dying declaration stand affected by existence of many other circumstances effecting its truth and correctness".

In the aforesaid observations, general principles are laid down by the Supreme Court as to how and in what circumstances dying declaration should be believed. It is important to note that the aforesaid observations are generally relate about caution to be taken before believing the dying declaration. In the present case, we have already found the dying declarations being reliable and trustworthy and therefore, the aforesaid observations are in fact helpful to the prosecution case as the guidelines mentioned in the aforesaid observations are fulfilled in the present case.

XI) In the case of **Manohar Dadarao Landge vs. State of Maharashtra, 2000(2) Mh.L.J. 3**, it has been observed as under :

"Para No. 32, 40 and 51 : Declarant must admit that the statement was read over to him / her and was

heard by him / her and must admit that it is correct. If this is not complied with then the dying declaration cannot be relied upon.

Para No. 42 : *Prosecution must produce relevant medical test papers".*

In the case of **State of Punjab vs. Gain Kaur and another, 1998 SCC(Cri) 942**, it has been observed as under :

"Para No.5 : In case of 100% burns there cannot be ridges. It would make the dying declaration doubtful".

In case of **Abdul Riyaz Abdul Bashir vs. State of Maharashtra, 2012(2) Mh.L.J. (Cri.)437**, it has been observed as under :

"Para No. 8 : Merely because it is printed proforma that statement is read over to the deponent it cannot be presumed that actual exercise of reading over the statement and getting it endorsed was actually followed.

Para No. 12 to 14 : *Dying declaration if recorded after arrival of the parents and relatives of the deceased plausibility of deceased being tutored cannot be ruled out".*

We have consistently stated that no certain formalities are to be followed while recording dying declarations in the light of guidelines mentioned in the case of **Purshottam** (*supra*). Moreover, it is specifically mentioned that percentage and degree of burns in burning cases, is not material at all for deciding credibility of dying declaration. Under such circumstances, the observations in aforesaid cases are not at all helpful to the appellants.

25. Same is the case in respect of following observations in the cases mentioned below.

In case of **Ganpat Bakaramji Lad vs. State of Maharashtra**, 2018(2) Mh.L.J. 786, it has been observed as under :

"Para No. 20, 22, 23 and 34 : The necessity of reading over and explaining the deceased of the dying declaration only could exempted in very exceptional and extra ordinary circumstances otherwise cannot be.

Para No. 29 : It is for the court to arrive at a conclusion based on the satisfactory material that the declarant was conscious and fit. Court further has to decide that the dying declaration was not the

product of tutoring, prompting, imagination or vindictive. If there is slightest doubt or suspicion, dying declaration not to be acted upon. It is not a general rule that in every case there is an exemption from reading over of the statement to the declarant".

In the case of **Shaikh Bakshu and others vs. State of Maharashtra**, (2007) 11 SCC 269, it has been observed as under :

"Para No. 13 : The fact that the dying declaration was read over and explained to the declarant must be clearly mentioned in the dying declaration. In the absence of such mentioned in the dying declaration the fact cannot be presumed".

In the case of **Surinder Kumar vs. State of Haryana**, (2011) 10 SCC 173, it has been observed as under :

"Para No. 14 to 31 : Deceased was given injunction (sedative painkillers), it should be presumed therefore, that the deceased was not supposed to be having normal alertness. Such dying declaration does not inspire confidence".

26. Thus, we find that the citations relied upon by the learned counsel for the appellants are not helpful mainly because the two dying declarations in the present case do inspire confidence and the same are consistent, coherent and voluntarily made throughout. Thus, the same are sufficient to record conviction of appellants even without any corroboration.

27. In the case of ***Laxman vs. State of Maharashtra, AIR 2002 Supreme Court 2973*** in para 3 has made following observations :

"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 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".

28. In case of **Purshottam** (supra) the Supreme Court in paragraph nos. 18, 18.1 and 18.2 has made following observations :

*"18. The principles relating to admission and acceptability of the statement made by a victim representing the cause of death, usually referred to as a dying declaration, are well settled and a few doubts as regards pre-requisites for acceptability of a dying declaration were also put at rest by the Constitution Bench of this Court in the case of **Laxman v. State of Maharashtra : (2002) 6 SCC 710.***

18.1. In the said case of Laxman, conviction of the appellant was based on dying declaration of the deceased which was recorded by the

*Judicial Magistrate. The Session Judge and the High Court found such dying declaration to be truthful, voluntary and trustworthy; and recorded conviction on that basis. In appeal to this Court, it was urged with reference to the decision in **Paparambaka Rosamma and Ors. v. State of Andhra Pradesh : 1999 CriLJ 4321** that the dying declaration could not have been accepted by the Court to form the sole basis of conviction since certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement. On the other hand, it was contended on behalf of the State, with reference to the decision in **Koli Chunilal Savji and Anr. v. State of Gujrat: 1999 CriLJ 4582**, that the material on record indicated that the deceased was fully conscious and was capable of making a statement; and his dying declaration cannot be ignored merely because the doctor had not made the endorsement about his fit state of mind to make the statement. In view of these somewhat discordant notes, the matter came to be referred to the Larger Bench. The Constitution Bench summed up the principles applicable as regards the*

acceptability of dying declaration in the following:-

“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 the deathbed 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 courts 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 always to 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 looks 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 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 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.”

18.2. The Constitution Bench affirmed the view in Koli Chunilal Savji (supra) while

holding that Paparambaka Rosamma (supra), was not correctly decided. The Court said,-

“5.....It is indeed a hyper technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in Paparambaka Rosamma v. State of A.P.(1999) 7 SCC 695 must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat (1999) 9 SCC 562.”

29. Thus, in the light of aforesaid observations, we find that both the dying declarations in the present case which are at Exhibits- 64 and 54 have satisfied the guidelines and principles laid down in the aforesaid two cases and the same appear to be consistent, coherent and voluntary in respect of

the guilt of the appellants. Therefore, as per our discussion made herein above and considering the entire evidence on record, we are of the view that the prosecution has established the fact that on the fateful day, appellant no.1 poured kerosene on the person of deceased Sheetal and appellant no.2 set her ablaze with the help of match-stick, which resulted into her death. Thus, we are of the opinion that the learned trial court by considering all the above mentioned evidence, has rightly convicted the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Hence, we do not find that it is a fit case for any interference. Accordingly, the present appeal fails and stands dismissed.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-