

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

CRIMINAL APPEAL NO. 699 OF 2014

Ashok s/o Dattarao Bhogane,
age: 30 years, Occ: Coolie,
R/o Mahavir Traders,
Nava Mondha, Parbhani,
Tq. & District Parbhani.

Appellant

Versus

The State of Maharashtra,
through Police Station Kotwali,
Parbhani, Tq. & District
Parbhani.

Respondent

Mr. P. P. Dawalkar, advocate (appointed) for the appellant
Mr. R. D. Sanap, APP for the Respondent-State.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE,JJ.**

DATE : 09th February, 2022.

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

1 This is an appeal preferred by the appellant i.e. original accused in Sessions Trial No. 104/2013 against his conviction recorded by the learned Sessions Judge, Parbhani (as she then was and hereinafter referred to as the learned

trial Court), in the said case vide judgment and order dated 29.09.2014. The learned trial Court has found the appellant-accused guilty for the offence under Section 302 of the Indian Penal Code and accordingly sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.5000/-, in default, to suffer simple imprisonment for six months.

2 The prosecution story is as under:

The appellant-accused had married with one Rohini i.e. deceased in the present case before six months of the incident and they were residing in tin shade at Motilal Jain Traders, New Mondha, Parbhani along with parents of the appellant. The appellant and his wife Rohini initially resided happily together for about four months and thereafter appellant started suspecting Rohini's character. However, on 26.04.2013, one Vishnu Manohar Giri, N.P.C. B. No. 779, attached to Civil Hospital Police Chowky, Parbhani, who is P. W. No.10 in the present case, received information that Rohini was admitted in the said hospital on account of sustaining

90% burn injuries. He also received MLC No. 2834 to that effect. As such, he went to the Medical Officer i.e. Dr. Gajanan Kale (P. W. 12) and told him that he wanted to record statement of patient Rohini. Thereafter, he recorded statement of Rohini as per her say, wherein, she narrated that on 26.04.2013 at about 4.00 p.m., she was at home with the appellant and her in-laws had gone out for work. When she told the appellant-accused about going to attend nature's call, the appellant abused her and restrained her from going out. When she again insisted for going to attend the nature's call, the appellant-accused brought kerosene can and poured kerosene on her person and thereafter set her ablaze with the help of matchstick. When she came out of the house burning and shouting, her father-in-law Dattarao i.e. P. W. 1 and other coolies present at Mondha, extinguished her fire with the help of water and gunny bags. Since she sustained severe burn injuries, her in-laws put her in an auto rickshaw and got her admitted in the Civil Hospital, Parbhani. Rohini also stated that she was the second wife of the appellant-accused and his first wife Kavita was living separately due to harassment by

the appellant.

3 P. W. 10 N.P.C. Vishnu Giri also issued letter to the Special Executive Magistrate Mr. Ramdas Kolgane i.e. P. W. 11 for recording dying declaration of Rohini and the said Executive Magistrate recorded second dying declaration of Rohini. Accordingly, on the basis of the first dying declaration of Rohini, which is at Exhibit-42, then P. I. Of Kotwali Police Station, registered crime against the appellant-accused initially for the offences punishable under Sections 307, 498A, 494, 504 and 506 of the Indian Penal Code vide Crime No. 76/2013. However, as Rohini died thereafter on 05.05.2013 while taking treatment, offence under Section 302 of the Indian Penal Code was added against the appellant.

4 The Investigating Officer Mr. Nitin Kandare, P. S. I. Kotwali Police Station i.e. P. W. 15, was handed over with the investigation of the aforesaid crime. During the course of investigation, the Investigating Officer visited the spot of incident with two *panchas* and prepared spot *panchanama*.

He also seized articles comprising one black coloured plastic can containing half filled kerosene, pieces of red colour bangles, one matchstick box, one half burnt matchstick, pieces of saree having red and purple strips, from the spot. He then arrested the appellant-accused and seized his clothes comprising brown coloured pant and red banian in the presence of *panchas*. He thereafter recorded statements of witnesses and also collected the statement recorded by the Executive Magistrate. He got the map of the spot prepared under the directions of Tahsildar and also collected electricity bill from the spot of the incident. As the victim Rohini died on 05.05.2013, the Investigating Officer conducted inquest *panchanama*, collected *post mortem* report and other relevant documents. He also sent the seized articles and clothes of accused to C. A. Office at Aurangabad and accordingly collected the C. A. report in respect of the same, which is at Exhibit-71. On completion of investigation, he filed charge sheet against the appellant-accused. The learned Magistrate committed the case to the learned trial Court.

5 Learned Additional Sessions Judge framed charge against the appellant-accused at Exhibit-4 for the offence punishable under Sections 498-A and 302 of the Indian Penal Code. The appellant-accused pleaded not guilty and claimed for trial. On completion of trial, the learned trial Court recorded statement of the appellant under Section 313 of the Criminal Procedure. The appellant defended himself by denying the allegations and came out with the defence that he was falsely involved in the crime. The learned trial Court, after considering the entire evidence on record, has convicted the appellant-accused, as mentioned above. Hence, this appeal.

6 On going through the evidence adduced by the prosecution, it appears that the prosecution, in support of the charges levelled against the appellant-accused, has examined in all 15 witnesses out of which, P. W. 1 Dattarao Shankarrao Bongane, who is father of the appellant, has refused to support the prosecution case and on the contrary, stated that deceased Rohini had in fact set herself on fire as there was

nobody in the house. He claimed that he himself and two other coolies extinguished her fire and further stated that deceased Rohini had disclosed him that she set herself ablaze and thereby committed suicide. It is obvious that this witness, being the father of the appellant-accused, must have deposed contrary to the prosecution story to save his son. As such, his evidence does not appear to be helpful to the appellant-accused.

7 P. W., 2 Dr. Sudhakar Sheshrao Pole appears to be the Medical Officer who conducted *post mortem* on the dead body of Rohini between 07.40 a.m. to 08.40 a.m. at Civil Hospital, Parbhani on 05.05.2013. According to him, Rohini had sustained severe burn injuries i.e. 90% burn injuries and died due to terminal cardio respiratory failure due to septicemic shock due to 90% superficial deep burn injuries. He has specifically deposed that thumb impression of deceased could have been obtained even in case of superficial burn injuries to her thumb. Though this witness termed the death of Rohini being unnatural one, but admitted that the

death might be accidental, homicidal or suicidal.

8 The third witness of prosecution is Salimkhan Mehtabkhan Pathan, who appears to be a coolie. He, at the time of the incident, was working nearby the house of the appellant along with other coolies and was unloading gram bags from the bullock cart. He has deposed that he heard shouts of deceased, “*bachao, bachao*” at the time of incident. He also stated that before hearing such shouts, dispute was going on between the appellant and Rohini. He further stated that deceased and the appellant were in their house and after that Rohini came out of the house in burning condition. They tried to extinguish fire of the deceased and then she became unconscious. According to him, parents of the accused took the deceased to hospital in an auto rickshaw. This witness is also a *panch* witness to the inquest *panchanama* Exhibit-25.

9 P. W. 4 Rupesh Omprakash Darak is the *panch* witness to the spot *panchanama* Exhibit-28 and he stated about the scene as per the prosecution story. He has

specifically deposed that one black coloured plastic can containing about half liter kerosene, a match box along with one burnt out matchstick, broken red coloured bangle pieces and burnt pieces of saree of red, green a violate colour were seized from the spot in his presence. He also identified those articles in Open Court. Nothing adverse to the case of prosecution has been brought on record in the cross examination of this witness.

10 The next witness of the prosecution i.e. P. W. 5 Chandrakant s/o Manikrao Kakde appears to be a person doing labour work with P. W. 3 and others at Mahavir Traders at the time of incident. However, this witness did not support the case of the prosecution and stated that he had gone to have tea at about 4.00 p.m. and when he returned, he saw Rohini i.e. wife of the appellant-accused was being taken to the hospital in burnt condition. In the cross examination, he has specifically admitted that he had good relations with the appellant. As such, inference can safely be drawn that he tried to save the appellant-accused. P. W. 6 – Sk. Khaja s/o

Sk. Nijam is the *pancha* witness to the seizure *panchanama* under which clothes of accused were seized. However, he also did not support the case of the prosecution.

11 The next witnesses are P. W. 7 Suman Trimbak Dhule and P. W. 8 Leelabai Arjun Jadhav, who are the mother and aunt, respectively of the deceased. They have stated that the appellant-accused used to beat Rohini under the influence of liquor by suspecting her chastity. Both of them deposed that on the day of the incident, at about 04.30 p.m., they received information that Rohini sustained burn injuries. Both of them have stated that when they went to see Rohini in the hospital, she told them that the appellant-accused poured kerosene on her person and set her ablaze. Thus, both these witnesses claimed that deceased Rohini had made oral dying declaration to them as to how she sustained burn injuries. P.W. 9 is Santosh Madhavrao Patwe, N. P. C., B. No. 418, attached to Kotwali Police Station. He deposed about receiving the *muddemal* articles in sealed box and envelopes from the Investigating Officer, which he had carried

to C. A. office at Aurangabad and deposited the same there.

12 The next witness of the prosecution is P. W. 10 – Vishnu Manohar Giri, N. P. C., B. No.779, attached to Civil Hospital Police Chowky, Parbhani. He recorded statement of Rohini in the form of first dying declaration as per Exhibit-42. After recording the said dying declaration, he also gave call to P. W. 11 Mr. Ramdas Kolgane, Executive Magistrate working at Tahsil Office, Parbhani, for recording dying declaration of Rohini. This witness P. W. 11 – Ramdas s/o Kondiba Kolgane has also deposed as to how he recorded dying declaration of Rohini as per Exhibit-51 wherein Rohini accused the appellant for setting her ablaze. P. W. 12 Dr. Gajanan Sopanrao Kale, is the Medical Officer attached to Civil Hospital, Parbhani on 26.04.2013. This witness has stated about recording of both dying declarations of Rohini by P. W. 10 and P. W. 11. We are going to discuss the evidence of these witnesses, namely P. W. 10 to P. W. 12 in the later part of the judgment.

13 The next witness P. W. 13 – Motilal Kapurchand Jain appears to be owner of “Shri Mahavir Traders” wherein the appellant-accused used to work. Though he has deposed that the appellant-accused was residing in the Adat shop in the premises of Mahavir Traders itself along with his wife Rohini and parents, but refused to support the prosecution case. He only stated that at about 04.00 p.m. to 05.00 p.m., they saw Rohini was lying in burnt condition in front of his shop. However, he has admitted in his cross-examination as to how first wife of appellant left the house since the appellant always used to quarrel with her. P. W. 14 - Laxmikanth Chidramappa Kapse is the *panch* witness to the seizure *panchanama* under which clothes of the appellant-accused were seized. However, this witness also did not support the prosecution story, but has admitted his signature on the seizure *panchanama*. The last witness of the prosecution P. W. 15 – Nitin Jagannath Kandare was the Investigating Officer in this case, whose evidence we have already discussed herein above and it is mainly relating to procedural aspects.

14 Learned Counsel for the appellant-accused strongly submitted that the learned trial Court has erred in holding the appellant-accused guilty of the offence punishable under Section 302 of the Indian Penal Code by ignoring the material contradictions between the two dying declarations recorded by P. W. 10 and P. W. 11. He further submitted that due to omissions, evidence of P. W. 3 – Salim Khan Pathan cannot be relied upon to the extent of presence of appellant-accused in the house at the time of incident when Rohini caught fire. According to him, Rohini was totally unconscious and, therefore, could not have narrated as to how she was set ablaze by the appellant-accused. He pointed out the admissions given by mother and aunt of Rohini (P. W. 7 and P. W. 8) wherein they have deposed that when they went to hospital, Rohini was sleeping. He pointed out from those admissions as to how the theory of oral dying declarations is unbelievable. With these submissions, learned Counsel for the appellant, prayed for setting aside the conviction of the appellant.

15 On the contrary, learned A. P. P. submitted that both the dying declarations recorded by P. W. 10 and P. W. 11 appear to be consistent, voluntary and reliable. Moreover, before recording those dying declarations, the concerned witnesses had taken all the precautions. Further, mother and aunt of deceased Rohini had also deposed satisfactorily in respect of the oral dying declarations made to them by the deceased. Learned A. P. P. has specifically pointed out that though the appellant-accused was in the house at the time of incident, but he did not try to extinguish fire of the deceased, which definitely discloses his intention. He also pointed out that the incriminating articles found on the spot of the incident and the C. A. report in respect of the same at Exhibit-71 clearly indicate guilt of the accused. In addition to these submissions, learned A. P. P. has relied upon the judgment dated 17th January, 2022, of this Court (Coram: V. K. Jadhav & Sandipkumar C. More, JJ.) in Criminal Appeal No. 614 of 2014, wherein this Court, on the basis of dying declaration, found the appellants therein guilty for the offence punishable under Section 302 of the Indian

Penal Code. Thus, the learned A. P. P. prays for dismissal of the appeal being devoid of merits.

16 We have carefully gone through the entire material on record in the light of submissions made on behalf of the rival parties. It is the case of the prosecution that deceased Rohini was the second wife of the appellant-accused and after her marriage, she was treated properly for the period of four months, but thereafter, the appellant has started taking doubt on her chastity and did not allow her to go out. On the date of the incident i.e. on 26.04.2013, Rohini wanted to go out to attend nature's call, but the appellant did not allow her to go out. On asking again to go out, the appellant got furious and started abusing Rohini. Not only this, but he brought kerosene can and poured it on the person of Rohini and then with the help of matchstick set her ablaze. The learned Counsel for the appellant has argued that Rohini had in fact committed suicide by setting herself ablaze and at the relevant time, the appellant was not in the house. Though father of the appellant P. W. 1 – Dattarao has stated

so in his cross-examination, that after Rohini caught fire, he extinguished her with the help of others and at that time, Rohini had told him that she herself set ablaze, however, being father of the appellant-accused, P.W.1 – Dattarao has every reason to save his son and, therefore, we need to find out whether death of Rohini was suicidal or homicidal.

17 Admittedly, from the evidence of Medical Officer – P. W. 2 Dr. Sudhakar Sheshrao Pole it has been revealed that death of Rohini was caused due to 90% burn injuries and it was unnatural. P. W. 2, though could not explain as to whether the death was accidental, homicidal or suicidal, but the material on record indicates that the prosecution story is based upon two dying declarations Exhibit-42 and Exhibit-51. Besides this, the mother as well as aunt of the deceased have also stated that Rohini had told them that the appellant set herself ablaze. As such, in addition to two written dying declarations, two oral dying declarations are also available in this case. It is, therefore, necessary to find out whether those dying declarations are reliable and trustworthy.

18 The learned A. P. P. has strongly relied upon the judgment of this Court in Criminal Appeal No. 614 of 2014 wherein the judgments in the case of **Laxman Vs. State of Maharashtra**, AIR 2002 SC 2973 and in the case of **Purshottam Chopra & another Vs. State (Government of NCT, Delhi)**, 2020 AIR (SC) 476, are discussed. According to the ratio laid down by the Hon'ble Supreme Court in the case of **Laxman** (*supra*), a dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court. Further, it is also observed in the said judgment that 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 voluntary and not a result of tutoring, prompting or imagination. The Hon'ble Supreme Court has also observed that if the witnesses affirm that the deceased was in a fit and conscious state of mind while making the statement, there is no need of medical opinion also. Further, in the case of **Purshottam** (*supra*), the Hon'ble Supreme Court, after going through the various earlier cases,

has observed in paragraph 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 a 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 of 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.”

19 On going through the aforesaid principles and observations, it appears that there is no specific format, in

which dying declaration must be recorded. Moreover, there is also no express need that each and every dying declaration should be recorded by a Magistrate. It is also observed that the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration. Therefore, in the light of these observations of the Hon'ble Supreme Courts in the aforesaid cases, let us see evidence relating to aforesaid dying declarations at Exhibit-42 and Exhibit-51.

20 The first dying declaration at Exhibit-41 is recorded by P. W. 10 Vishnu Manohar Giri i.e. N. P. C., attached to Police Chowky at Civil Hospital, Parbhani. On perusal of the evidence of this witness, it appears that when he got information about the admission of Rohini in burnt condition in the said hospital, he, after receiving MLC No.2834 i.e. Exhibit-41, approached the Medical Officer on duty i.e. P. W. 12 Dr. Gajanan Sopanrao Kale. It further appears that after Rohini was examined by the said Medical Officer and found her fit to give statement, he recorded her statement, wherein she narrated him as to how the appellant

used to suspect her chastity and how on the day of the incident, the appellant poured kerosene on her person and set her ablaze. This witness P. W. 10 Vishnu Giri has also specifically stated that after recording statement of Rohini, he read over its contents to her and got confirmed from her that it was recorded as per her say. He also obtained her thumb impression below her statement. He thereafter taken care to seek opinion of the Medical Officer P. W. 12 about consciousness of Rohini after recording her statement. On perusal of the said dying declaration Exhibit-42, it appears that before recording the said statement, P. W. 12 Dr. Kale had given endorsement at Exhibit-56 on the said statement itself showing that Rohini was conscious, well oriented and able to give statement. Not only this, but there is also an endorsement of the said doctor below the statement, as per Exhibit-57 mentioning that Rohini was conscious and well oriented throughout while making the statement. It appears that the aforesaid dying declaration at Exhibit-42 is recorded at about 06.30 p.m. to 07.00 p.m. i.e. immediately after her admission to the hospital. Moreover, the aforesaid timings

are also mentioned by P. W. 12 Dr. Kale in his endorsement at Exhibit-56 and Exhibit-57. Further, it is evident that deceased Rohini had narrated that the appellant did not allow her to go out for attending nature's call and then after abusing her, he set her ablaze. This witness P. W. 10 has deposed that after recording the first dying declaration, he issued letter to the Special Executive Magistrate for recording dying declaration of Rohini in prescribed format. On going through the cross-examination of P. W. 10, it appears that nothing adverse has been brought on record from the side of the appellant-accused to disbelieve testimony of P. W. 10. Though P. W. 10 has admitted the fact that he did not mention as to what questions were put to Rohini, but as per the observations of the Hon'ble Supreme Court in the aforesaid cases, it is not at all required that such questions are to be mentioned in the dying declaration itself. The Hon'ble Supreme Court has also laid down that it is not necessary that there must be any prescribed format for recording dying declaration, but the only test to believe the same is that it must inspire full confidence of the Court

before believing the same. As such, the submissions made on behalf of the learned Counsel for the appellant, to that effect, cannot be considered.

21 It appears that after recording of first dying declaration at Exhibit-42, P. W. 11 Ramdas Kolgane i.e. the Executive Magistrate, serving at Tahsil Office, Parbhani, at the relevant time, has also recorded second dying declaration of Rohini at Exhibit-51 in prescribed format. This witness P. W. 11 has also specifically deposed that on receiving request letter from the Police Chowky at Civil Hospital, Parbhani, for recording dying declaration of Rohini, he went there and met Medical Officer Dr. Kale and after examining Rohini by the doctor, he found that she was fit to give statement. There is also an endorsement of P. W. 12 Dr. Kale about the consciousness of Rohini on the said dying declaration as per Exhibit-59. Thus, it appears that after securing the opinion of Dr. Kale, P. W. 11 Ramdas Kolgane recorded dying declaration of Rohini in question and answer form. On perusal of the same, it appears that Rohini had told P. W. 11

that at the time of incident, the appellant had poured kerosene on her person and then set her ablaze with the help of matchstick. It is specifically mentioned by the deceased in the said dying declaration that the appellant used to take doubt on her character and on that count, he set her ablaze. It is also stated by Rohini that at the time of incident, nobody, except the appellant, was at home and her father-in-law i.e. P. W. 1 Dattarao came later on and extinguished her fire. It is evident that in the said dying declaration, Rohini had made specific allegation against the appellant-accused for causing the incident. It is important to note that below the second dying declaration at Exhibit-51, there is again an endorsement of P. W. 12 Dr. Kale mentioning that Rohini was conscious and well oriented throughout recording of the said statement. Though this witness, in his cross examination, has admitted that he did not mention the questions put to Rohini to verify her mental condition and not mentioned that the said statement was read over to Rohini, but it does not make any difference, since, according to P. W. 12 Dr. Kale, she was fully conscious and well oriented. Moreover, the second

dying declaration Exhibit-51, recorded by this witness P. W. 11, is consistent with the main allegation that the appellant-accused had set Rohini ablaze by pouring kerosene on her person on account of suspicion about her character.

22 The evidence of P. W. 10 and P. W. 11 is also well corroborated by P. W. 12 Dr. Kale, who, in his evidence, has categorically deposed that before and after recording of both these dying declarations, he had examined Rohini and found her conscious and well oriented. It appears that the first dying declaration was recorded from 06.30 p.m. to 07.00 p.m. and the second one was recorded in quick succession from 07.05 p.m. to 07.25 p.m. In both these dying declarations, Rohini was firm as regards her allegations as against the appellant-accused. Nothing adverse has been brought on record in the cross examination of P. W. 12 Dr. Kale. On the contrary, he has opined that thumb impression of the patient or the declarant can be obtained even if there are superficial burn injuries to the hands. Therefore, on going through the material evidence of P. W. 10, P. W. 11 and P. W. 12, as

mentioned above, we do not find any doubtful circumstance while recording the aforesaid dying declarations. On the contrary, it is evident that both the aforesaid dying declarations are voluntary, trustworthy and consistent in respect of the prosecution story against the appellant-accused. These dying declarations also inspire full confidence of the Court as per the principles laid down by the Hon'ble Supreme Court in the case of **Purshottam** (*supra*). There is nothing on record to indicate that the aforesaid dying declarations are the result of any tutoring, prompting or imagination. Hence, these dying declarations can be believed for recording conviction against the appellant-accused.

23 There are two other witnesses, namely mother and aunt of the deceased on the point of making similar oral dying declarations to them by Rohini. Though, learned Counsel for the appellant has pointed out the admission in the cross examination of these two witnesses to the effect that when they went to the hospital, Rohini was sleeping, but merely because of that, whatever narration made to these witnesses

by Rohini, cannot be doubted mainly because it was not specifically suggested to them that Rohini was sleeping at the relevant time and they had no occasion to talk with her.

24 Besides the aforesaid dying declarations, there is also other evidence on record in the form of circumstantial evidence. On going through the spot *panchanama* Exhibit-28, it is evident that incriminating articles comprising of one black coloured plastic can containing about half liter kerosene, a match box along with one burnt out matchstick, broken red coloured bangle pieces and burnt pieces of saree of red, green and violate colour were seized from the spot and the evidence of P. W. 4 Rupesh Darak i.e. *panch* to the spot *panchanama* has also substantiated the said seizure. Even though the panchas on the seizure of clothes of appellant, did not support the prosecution, but the said seizure has been proved by the Investigating Officer. Merely because the *pancha* witnesses to the seizure *panchanama* of clothes of the appellant-accused did not support the prosecution, the recovery of those clothes cannot be doubted. Further, the

evidence of P. W. 9 Santosh Patwe i.e. the N. C. P., attached to Kotwali Police Station, has also disclosed that he carried the *muddemal* articles to C.A. office, Aurangabad, under covering letter Exhibit-39. Moreover, the C. A. report in respect of those articles, which is at Exhibit-71, also corroborates the prosecution case wherein it has been found that the clothes of the appellant and the partly burnt saree pieces found on the spot, tested positive for detection of kerosene residues thereon. As such, this circumstance also goes against the appellant-accused and indicates his presence with deceased Rohini at the time of the incident.

25 Learned Counsel for the appellant has strongly submitted that there is no independent witness examined by the prosecution who states that at the time of incident, the appellant-accused was with the deceased. However, the evidence of P. W. 3 Salimkhan Pathan, who was coolie and had extinguished fire of deceased, clearly indicates that the appellant-accused was in the house with Rohini at the time of incident and he along with others extinguished fire of Rohini

when she came out of the house in burning condition. Though from the cross examination of this witness, it appears that the statement made by him that the appellant was in the house at the relevant time had come on record by way of omission, but there are two trustworthy dying declarations of the deceased herself on record wherein she has accused the appellant of setting her ablaze. There is no plausible explanation from the appellant-accused in his statement recorded under Section 313 of the Code of Criminal Procedure as to how the incident took place. On the contrary, evidence of P. W.1 Dattarao and P. W. 3 Salimkhan clearly indicates that at the time of incident, they saw Rohini coming out of the house in burning condition. There is nothing brought on record from the side of appellant-accused that at the time of incident, he was not in the house but was somewhere else. The accused-appellant has also not explained satisfactorily as to where he was at the time of incident. Considering the occurrence of the incident within his house, it was the appellant-accused who was under an obligation to give plausible explanation as to how the incident took place. But

in the absence of the same, no benefit can be given to him on that count. It is extremely important to note that there was no attempt from the appellant-accused to come out and extinguish the fire of Rohini especially when his own father and other persons had extinguished the fire by pouring water and with the help of gunny bags. This conduct, on the part of the appellant-accused, by itself, suggests that he was having an intention to cause her death. Moreover, it has also come on record that the appellant-accused was doubting character of the deceased and, therefore, he was definitely having a motive to kill her.

26 Thus, considering all these aspects, it can be sufficiently gathered that the appellant-accused, by suspecting character of his wife Rohini, killed her by setting her ablaze after pouring kerosene on her person. We are having two consistent, voluntary and reliable dying declarations about the incriminating act of the appellant from the mouth of the deceased and the same fulfill all necessary preconditions and principles laid down by the Hon'ble

Supreme Court in the case of **Purshottam** (*supra*).

27 We, therefore, find that the learned trial Court, after considering the entire material on record in its proper perspective, has rightly convicted the appellant-accused. We, therefore, do not find any reason to interfere with the finding recorded by the learned trial Court of convicting the appellant-accused under Section 302 of the Indian Penal Code.

28 Hence, we pass the following order:

(i) Criminal Appeal is dismissed.

29 We quantify legal fees and expenses of the Counsel appointed for the appellant at Rs.10,000/- (Rs. Ten thousand) to be paid by the High Court Legal Services Sub Committee at Aurangabad.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE