

UMESH
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 741 OF 1998

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| 1. Daniyal Shivaji Alhat,
Age 37 years, Occ: Service, | } | ...Appellants
(Orig. Accused) |
| 2. Radhika Daniyal Alhat
Age – about 30 years,
Occ: Household, | | |
| Both residing at S.No. 46,
Vishrantwadi, Pune City.
(Both in jail) | | |

Versus

The State of Maharashtra	}	...Respondent
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Mr. Ashish Satpute for the Appellant.

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

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : JULY 28, 2021

PRONOUNCED ON : FEBRUARY 01, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by 2nd Additional Sessions Judge, Pune in Sessions Case No. 360 of 1990 whereby the Appellants – Original Accused who were charged for commission of offences punishable under Sections 302 & 498-A read with Section 34 of the Indian Penal Code (for short

'IPC') convicted and awarded sentence to suffer rigorous imprisonment for life and to pay fine of Rs. 1,000/-, in default each accused to suffer RI of three months, for the offence punishable under Section 302 of IPC, filed the present Criminal Appeal.

2. It the case of prosecution that in the intervening night of 24.04.1990 and 25.04.1990, ASI Raja Bhangare (PW 7), attached to Alandi Road Police Chowky and was discharging his duty as station incharge and his duty hours were from 09.00 AM to 09.00 PM. On 24.04.1990, at about 01.45 pm Sandip Alhat had been to the police station claiming to be the brother-in-law of the victim informed Raja Bhangare (PW 7) that his sister-in-law Chandrakala suffered burn injuries. On receipt of the information, ASI Raja Bhangare (PW 7) immediately rushed to the spot. On reaching to the spot, ASI Raja Bhangare (PW 7) found that the victim Chandrakala was already shifted to Sassoon Hospital. On information received by him, before proceeding to Sassoon Hospital, ASI Bhangare (PW 7) sent intimation / requisition letter to Special Judicial Magistrate Shri. Kamlakar (PW 3) to attend Sassoon Hospital for

recording the statement of victim. The said requisition letter is produced before the Court as part of evidence and the same is marked as Exhibit 21. On 25.04.1990 at about 03.30 pm, the Special Judicial Magistrate reached hospital for recording the statement. On information, it revealed that patient was admitted in ward no. 27 of Sassoon Hospital. Accordingly, the Special Judicial Magistrate proceeded towards ward no. 27. He also took the medical officer along with him on seeking verification from the medical officer that the victim is in fit physical and mental state to give her statement. Then Special Judicial Magistrate put certain queries to the victim. On ascertaining that the victim is in fit mental and physical condition to give statement, the statement of victim was recorded. It was stated by the victim that her marriage was solemnized that accused no. 1. Accused no.2 is the wife of accused no. 1 and as there was no issue to the couple for considerable period, by approaching the father of victim and with consent of accused no. 2, accused no. 1 performed marriage with deceased.

3. It was stated by the victim that a quarrel

started between accused no. 2 and her, on the backdrop of the fact that the accused no. 2 by snatching child from victim and victim was opposing to the act of accused no. 2. Accused no. 1 who did not like the act of victim opposing the accused no. 2, abuses and physically assaulted the victim. Accused no. 2 then poured kerosene on the person of victim and set her ablaze. Due to intolerable pain, due to burns, the victim started crying and on hearing her hue and cry her brother-in-law Prasanna Kumar reached the spot and extinguished the flames. This statement was reduced in writing (as subsequently the victim deceased died due to burn injuries, this statement is treated as dying declaration.

4. While concluding the statement, the Special Judicial Magistrate sought the endorsement of the medical officer and accordingly, the statement was endorsed by the medical officer. On the basis of this statement, ASI Bhangare (PW 7) lodged the report being complaint. The report bearing CR No. 46/1990 was registered at Vishrantwadi Police Station for commission of offence punishable under Section 307 read

with Section 34 of IPC and the said FIR is marked as Exhibit 30.

5. Then there is another statement of the victim was recorded in present of medical officers namely, Dr. Madhuri Kulkarni and Dr. Smt. Goyal by reiterating the facts, the victim stated that on the fateful day she was at her home with husband and the accused no. 2. Accused no. 2 was demanding the child from the victim. On denial accused no. 1 started beating the victim and accused no. 2 poured kerosene on the victim and set her ablaze. It was stated by the victim that her brother-in-law made an attempt to extinguish flames. This disclosure came on record as a history submitted by the victim.

6. Meantime, information was provided to the father of victim Jairam Gaikwad at his village. The sister of father of victim was resident of Dhokeshwar Talki and on receipt of information, she reached to the house of Jairam Gaikwad. It was informed to her that the victim is admitted in the Sassoon Hospital. On inquiry by father Jairam victim reiterated the facts

namely, demand of the child from accused no. 2, denial by the victim, accused no. 2 trying to snatch the child from the victim, accused no. 1 beating the victim and accused no. 2 poured kerosene on her and set her ablaze. The intimation was also provided to the brothers of deceased. The brothers of victim on reaching to hospital made inquiry with victim and victim reiterated the facts with some more details such as, accused no. 1 gave her fist blows. Then she also reiterated that accused no. 2 poured kerosene on her and set her ablaze. While she was under treatment, on 16.05.1990 the victim succumbed to the burn injuries. Then IO drew the inquest panchnama. The dead body was referred to autopsy surgeon. Dr. Milind Wable performed the post mortem. We may refer to the evidence of autopsy surgeon at later part, suffice it to say that, autopsy surgeon found that the victim was subjected to extensive superficial to deep burns and total percentage of burns suffered by victim is 60%. Then it autopsy surgeon gave his opinion about the death of victim and he opined that the cause of death of victim was shock as a result of burn injuries.

7. As the investigating agency was set in motion on lodgment of the report, ASI Bhangare (PW 7), Khushalrao Garje (PW 8) and Uvappa Kanaram Chavan (PW 9), these three investigating officers investigated the matter. ASI Raja Bhangare (PW 7), take certain steps in the investigation such as, forwarding the requisition letter to Special Judicial Magistrate for recording the statement of victim, registration of crime, etc. Then Khushalrao Garje (PW 8) proceeded with investigation and effected the arrest of the accused persons, then recorded the statement of various witnesses, etc. Uvappa Kaneram Chawan (PW 9) then proceeded with investigation and took certain steps such as, drawing panchnama of scene of offence, drawn seizure panchnama, forwarding samples for laboratory for chemical analysis, collecting PM notes, etc.

8. On completion the exercise of investigation, the charge-sheet came to the filed in the Court of learned JMFC. As the offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The charges were read over to accused persons. They denied the guilt. In defence the

accused persons submitted that they have not committed any offence on the contrary, it was the deceased who was insisting the accused no. 1 to drive the accused no. 2 from the house. Accused no. 1 was not ready to act as per the insistence of the victim and he told the victim that he would have to maintain both wives. It was further line of defence of the accused persons is when the accused no. 1 denied to succumbed to the pressure of deceased, she warned him that if the accused no. 1 would not drive accused no. 2 from the house, she would commit certain overtact and would involve the accused no. 1 in some offence and resultantly the accused no. 1 would suffer jail punishment.

9. It was the defence of accused no. 1 that by saying so the victim herself went inside the room and when she came out of the room she was in flames. The accused no. 1 looked at her immediately and made attempt to extinguish the fire. Then the victim was shifted in Sassoon Hospital by arranging an auto rickshaw.

10. The prosecution in support of its case examined as many as 10 witnesses wherein the accused person also examined one witness in their defense.

11. Learned Trial Judge, on the basis of material brought before the Court framed the points for consideration and answered these points in affirmative i.e., accepting the case of prosecution and ultimately passed the judgment and order of conviction. Hence, this Appeal.

12. Learned Counsel appearing for the Appellants vehemently submitted that the evidence brought by the prosecution is not cogent and reliable. It is also submitted by learned Counsel for the Appellants that there is not direct evidence to support the case of prosecution and the prosecution relies on the indirect evidence in the form of dying declarations and the so called history recorded by the medical officers. Learned Counsel for Appellants further submitted that in so far as the oral dying declarations are concerned, as these declarations are made to the nearest relatives, i.e., father and uncle of the victim and the

witnesses being in close relations are the interested witnesses and it would be unsafe to accept the evidence of these witnesses. Learned Counsel for Appellants then submitted that the evidence show that the accused himself made an attempt to extinguish the flames and as such, it can be seen from the evidence that the accused no. 1 had no intention to commit an offence lodged against him. Thus, learned Counsel for Appellants prayed for allowing the Appeal.

13. *Per contra*, learned APP vehemently submitted that the evidence brought before the Court by the prosecution thoroughly consistent, reliable, trustworthy and cogent. Learned APP submitted that in the statement of the witnesses particularly, the father, the uncles of the victim, the brothers of victim, it is clearly stated that right from the initial period post marriage of the victim with accused no. 1, she was subjected to ill-treatment. Learned APP further submitted that it can be seen that there is a common thread in all these statements that the victim was so much depressed of the ill-acts of the accused person and she was not ready to reside with them due to

continuous apprehension of life to her. It is also submitted by learned APP that the statement of witnesses clearly show that though the parents of victim and brothers of victim time and again informed the accused no. 1 to mend his ways but, there is no change in his behaviour on the contrary, when ever the accused used to visit in-laws house, he used to be under influence of liquor. Learned APP then submitted that merely because the witnesses are the close relatives of the victim, it is not necessary to discard their evidence on the contrary, considering the sequence of events it was a natural act of victim to disclose about ill-treatment being suffered by her to her close relatives.

14. Learned APP also submitted that the written dying declaration recorded by the Special Judicial Magistrate complies with all pre-requisites and test of law. The Special Judicial Magistrate firstly himself satisfied physical and mental condition of the victim. Then sought the verification from the medical officer and after recording the statement again sought the approval of the medical officer. The medical officer

had endorsed the statement showing that the patient was in fit physical and mental condition right from the beginning of recording the statement till closure of the statement. Learned APP countering the submissions of learned Counsel for Appellants submitted that the facts emerged from the evidence collected by the investigating agency clearly show that both the accused were not only having knowledge before the act but intention to done away the victim, was also clearly reflected. Merely because accused no. 1 subsequently made an attempt to extinguish the fire would not absolve him from his conscious act of abusing and assaulting victim and then setting her ablaze. Learned APP in support of his submissions heavily relied on the judgment of the Apex Court in the matter of Purushottam Chopra and another vs. State (Govt. of NCT Delhi)¹. Thus, learned APP prayed for dismissal of the Appeal.

15. With the assistance of both the learned Counsel appearing for respective parties, we have gone through the material on record.

1 AIR 2020 SC 476

16. The prosecution in support of its case, examined as many as 10 witnesses. As the dying declaration recorded by Kamalakar Baburao Adhav (PW 3) – the Special Judicial Magistrate, and this dying declaration is in first point of time, we may refer to this witness, firstly.

17. Kamalakar Baburao Adhav (PW 3) is the Special Judicial Magistrate deposed before the Court that on 24.09.1990 at about 03.30 pm, he received a requisition letter from Vishrantwadi Police Station requesting for recording dying declaration. Accordingly, he went to Sassoon Hospital at ward no. 27. By the said letter, he was requested to record dying declaration of Chandrakala Danial Alhat. Doctor taken him to patient Chandrakala. He inquired with the doctor whether patient is in a condition to give statement. Doctor examined the patient Chandrakala and told him that her statement can be recorded. Then he asked Chandrakala about her name, age, occupation and address to which she replied and accordingly he reduced it in writing. It was about 04.00 pm he has given his introduction to her. He inquired with her whether she is fully

conscious, to which she replied in affirmative. Then he asked her whether she understood that he is Special Judicial Magistrate to which she replied in the affirmative. Then he inquired with her as to how she sustained burn injuries. She replied saying that she was married 2 years before with accused no. 1 and that she has one infant child, that her husband always picked up quarrel with her and used to beat her, that accused no. 2 used to ask her for her child. Accused no. 2 has no issues. That on 25.04.1990 at about 01.00 pm accused no. 2 snatched her child. That time accused no. 1 beaten her and accused no. 2 poured kerosene on her and set her on fire, due to which she sustained burn injuries. That she was crying out of pain and meanwhile her brother-in-law Prasanna Kumar came and put off the flames. That necessary action be taken against her husband and first wife. Then he recorded the answers given by patient as per her say. He read over the same and she conceded to the same. He has obtained her thumb impression and he signed the same. Then he also obtained the endorsement of the medical officer, who was present throughout.

18. In the cross-examination, this witness stated that he accompanied the police constable who came to him along with requisition letter Exh. 21 to Sassoon Hospital. He has read the requisition letter before signing. It was about 04.00 pm when he reached Sassoon Hospital. It was Dr. Goyal who took him to patient Chandrakala. Then this witness admitted that nowhere he had mentioned on Ex. 22 that Dr. Goyal examined the patient in his presence. Then this witness admitted that it was necessary to ask the patient whether the patient is mentally prepared to give statement. This witness admitted that when he went near the patient Chandrakala to inquire about her, there were few persons standing near her. Among the said persons, one was advocate. Then this witness counterly replied that he removed all the person before recording dying declaration. Then certain suggestions were given to this witness that while recording dying declaration except himself and the patient Chandrakala nobody was present, while recording dying declaration doctor was attending other patient, these suggestions were denied.

19. Balshiram Jairam Gaikwad (PW 1) is the brother

of deceased Chandrakala. This witness deposed before the Court that marriage of Chandrakala took place with accused Danial on 14.03.1988. After marriage she went to reside with accused at Vishrantwadi, Pune. Radhika – Accused no. 2 is the first wife of accused Danial. After about 10 to 11 months of marriage of deceased Chandrakala, he had been to her house to bring her at their place. During his said visit, he found bandage around his sister's head. On his inquiry, his sister disclosed to him that as she did not go and touch the feet of accused no.2, accused no. 1 abused her and accused no. 2 given a blow with iron rod on her head. Therefore, she sustained bleeding injury to her head. Hence, he has taken her to Sassoon Hospital for removal of stitches. This witness further deposed that doctor removed stitches, treated her. While returning, her sister disclosed to him that accused abused, beat her and ill-treat her and therefore, she was not prepared to return to her matrimonial home. Then he has taken sister to their house. Deceased also disclosed to them that a complaint was lodged with police in the matter and police arrested both the accused. After staying for

about couple of months with his father, he returned to Thane. On 28.04.1990 they received a telegram at Thane, intimating them that deceased sustained burn injuries. On the same day his brother came to Thane from Avsari. He also brought the same message. His brother told him that accused have beaten the deceased, accused no. 2 poured kerosene and set her on fire. The deceased was admitted to Sassoon Hospital for treatment. Therefore, this witness along with brother Madhukar both went to Sassoon Hospital to see their sister. Then he found her sister in speaking condition. Then he spoke to her. On his inquiry deceased disclosed to him that on 25.04.1990 at about 1 pm accused no. 1 returned home, for his food. At that time accused no. 2 snatched the child from deceased, poured kerosene on her person and set her on fire. Before that, accused no. 1 beaten her.

20. In the cross-examination, this witness admitted that accused no. 2 Radhika could not conceive, therefore, accused no. 2 in fact insisted for marriage of accused no.1 with Chandrakala. Then this witness denied suggestion that Chandrakala was leading happy married life under the same roof of accused nos. 1 and

2. Then this witness stated that he came to see his sister Chandrakala after receipt of telegram. He was attending Sassoon Hospital for 4-5 days. His other relatives also used to visit Chandrakala in Sassoon Hospital. Then this witness stated that after learning about the incident from the mouth of his sister Chandrakala, he has informed the police but however he was told that complaint was already recorded in the matter and police will record his statement.

21. Madhukar Jairam Gaikwad (PW 2) is the another brother of deceased. This witness deposed before the Court that at the time of incident he was residing in Bombay. Deceased Chandrakala is his sister. He used to visit his village Avasari every year during fair. Accordingly on 15.04.1990 he had been to his village to attend the fair. That time deceased Chandrakala was there in village Avasari. Chandrakala met him at his village prior to 15.04.1990. Prior to that she disclosed to him that accused were ill-treating her. Accused no. 1 under the influence of liquor beat her. Accused no. 2 instigates to ill-treat and beat her. She also disclosed to him that she apprehends danger to her

life in the lands of accused persons and that she was not willing to return to her matrimonial home. That time he persuaded her and asked not to be afraid of the accused. This witness further deposed that on 15.04.1990 he had been to village Avasari for attending the fair. That time Chandrakala was there. That time his father disclosed him that accused no. 1 came there fully drunk quarreled with his mother and was insisting to send Chandrakala and her son. That time Danial accused no. 1 was also there. Therefore, he asked him not to ill-treat Chandrakala. That time accused no. 1 assured them that henceforth he will not ill-treat Chandrakala. Therefore, they have sent Chandrakala on 16.04.1990 along with accused no. 1.

22. Then this witness further deposed that on 21.04.1990 while returning to Bombay, he had been to Chandrakala's matrimonial house at Vishrantwadi. That time Chandrakala was complaining that accused no. 2 snatches her son from her even during the nights. She also complained saying that if she does not give her child, accused no. 1 beats her. Therefore, he persuaded accused and requested them to allow the child to live

with her mother at least during the nights. On the next day, he left Chandrakala's house. Before leaving he had given Rs. 20 and asked her if she is further ill-treated, she may return to her parents house. On 29.04.1990 brother Balsiram came to him and informed that accused set Chandrakala on fire and that they should go to Sassoon Hospital, Pune to see her. Accordingly, on 30.04.1990, they came to Sassoon Hospital to see Chandrakala. They found Chandrakala sustaining burn injuries to her face, chest, hands and feet. They talked to her. She was in conscious condition. Chandrakala disclosed to them that on 25.04.1990 at about 1 pm accused no. 1 tried to snatch the child from her, to which she resisted. Therefore, accused no. 1 has beaten her badly and accused no. 2 snatched the child from her. Thereafter both the accused poured kerosene on Chandrakala and set her on fire.

23. In the cross-examination, this witness admitted that before police recording his statement, he did not tell anybody about what Chandrakala told him in the hospital. Then this witness stated that Chandrakala

also complained that she apprehends danger to her life in the hands of accused. Then he persuaded the accused persons saying not to ill-treat Chandrakala instead of advising Chandrakala not to return to her matrimonial house. Then this witness admitted that in his statement dated 01.05.1990 there is no mention about Chandrakala complaining to him regarding the ill-treatment meted out to her when she met him on 15.04.1990. Then this witness admitted that Chandrakala sustained burn injuries to her both the hands. Then certain suggestions were given that when he met Chandakala in Sassoon Hospital, she did not narrate the incident as narrated by him before the Court, as Chandrakala died, they have implicated the accused persons falsely, Chandrakala disclosed to him that as accused no. 1 was not driving out accused no. 2, she got annoyed, poured kerosene on her person and set herself on fire, Chandrakala never complained to him about ill-treatment meted out to her by the accused, all these suggestions were denied.

24. Ashok Arjun Tingre (PW 5) is the panch witness to the panchnama of scene of offence. This witness

deposed before the Court that on 25.04.1990 at about 05.45 pm he was called to the spot by the police for drawing panchnama of scene of offence. There was another panch. Accordingly, he went to the spot. He was called at Rameshwar Agarwal Chawl, S. No. 46, Vishrantwadi. He was called to the house of accused no. 1. One woman shown them the spot. Police have seized the articles in their presence. The articles consists of one stove, one match box, one shirt, one payjama, 2 quilts, 2 gunny bags, burnt clothes, broken pieces of bangle, the beads of mangalsutra, yellow colour earrings. Then police seized all these articles and obtained signatures of panch witnesses.

In the cross-examination, this witness stated that the scene of offence is at a distance of about 3 kms from his residence. Vishrantwadi Police Station is at a distance of 4 kms from his residence. At about 05.30 pm on 25.04.1990 he was in Vishrantwadi Police Station. At the relevant time he was passing by the police station, police called him. Then this witness stated that he has not personally ensured whether the articles were smelling kerosene as mentioned in

panchnama. The gunny bags found spreaded in the room and the soil below it was smelling of kerosene.

25. Jairam Bhikaji Gaikwad (PW 5) is the father of deceased. This witness deposed before the Court that deceased was married to Danial accused no. 1. After marriage Chandrakala started residing at Vishrantwadi in the house of accused no. 1. After about 4-5 months after marriage of Chandrakala, he went to her house at Vishrantwadi. Chandrakala complained to him saying that she was not being given proper food; she was being given stale food; that her husband used to beat her. The accused no. 2 was getting maximum work done from her. Then he persuaded deceased and also the accused and then left for her village. After about 2 months Chandrakala wrote letter to him. In the said letter she mentioned that she was being ill-treated and that he should bring her back on the excuse that her mother is sick. The said letter is dated 27.09.1989. This witness further deposed that generally in the month of April there takes fair in their villages. In the year 1989 during the fair period he has sent his son to Chandrakala for bringing her to their village. He sent

Balshiram to bring Chandrakala. Chandrakala came to their house along with Balshiram. That time he found injury to her head and there was bandage to her head. When inquired, she disclosed that her husband inflicted the injury. That time Chandrakala stayed with them for one year as she was pregnant. As regards oral dying declaration, this witness deposed that he inquired with Chandrakala as to how she sustained burn injuries to which she disclosed saying that at that time she and accused along with her son were in the house. Accused no. 2 quarreled with her. Accused no. 1 beaten her and accused no. 2 poured kerosene on her person and set her on fire.

26. In the cross-examination, this witness admitted that he had been to the house of Chandrakala only on 2 occasions after her marriage to till her death. Then this witness denied the suggestion that Chandrakala did not write Exh. 26 letter to him and that he got it fabricated. Then this witness admitted that he sent his son Balshiram to bring Chandrakala as then she was pregnant. That time Balshiram did not stay in the house of Chandrakala. Then this witness admitted

that when Chandrakala came to their place, he found bandage around her head. He inquired with her about the injury. Then this witness admitted that initially he learnt about the incident from his sister Gangubai. He received telegram on the day on which he learnt from his sister. Then certain suggestions were given that as accused no. 2 has no issues, his daughter wanted accused no. 2 to be driven out, as accused no. 1 was not prepared to drive out accused no. 2 his daughter out of irritation poured kerosene on her person and set herself on fire, his daughter did not narrate about the incident to him when he met her in Sassoon Hospital as he narrated before the Court, all these suggestions were denied.

27. Dr. Milind Wable (PW 6), is the autopsy surgeon. This witness deposed before the Court that on 07.06.1990 he was working as lecturer in Forensic Medicines, in BJ Medical College, Pune. On that day at about 00.50 a.m a dead body of Chandrakala Daniyal Alhat was brought by Vishrantwadi Police Station for post mortem examination. He conducted post mortem on the same day between 00.50 am to 01.50 am. On post

mortem, he found following external injuries : 1. Burn injuries on head neck and face 6%, chest and abdomen 12%, back 10%, both upper legs 9% each, and right lower limb 4%, total 60%. These injuries were ante mortem. All other organs were congested. The cause of death was due to shock as a result of burn injuries. Accordingly, he prepared post mortem report.

28. Raja Nimba Bhangare (PW 7) is the investigating officer. As we have already referred to this witness in earlier part, it may not be necessary for us to refer to this witness again.

29. Khushalrao Keshavrao Garje (PW 8), is also the investigating officer, who conducted part investigation. This witness effected the arrest of the accused persons. Then this witness stated that he recorded the statement of some other witnesses. Then this witness stated about steps taken by him in investigation.

30. Uvappa Kaneram Chawan (PW 9), is another investigating officer who also conducted some part of

investigation. This witness also stated about steps taken by him in investigation such as, drawing various panchnamas, recording statement of witness, drawing inquest panchnama, sending articles for CA, obtaining PM notes, etc. Omission in the version of witnesses are proved through this witness.

31. Madhuri Dattatraya Kulkarni (PW 10). This witness deposed before the Court that on 25.04.1990 she was serving in Sassoon Hospital as lecturer. On that day she was on duty in ward no. 27. Her duty hours were 09.00 am to 05.00 pm but still they are required to work for 24 hours in case of emergency. She knows Dr. Vanita Goel. On 25.04.1990 she was on emergency duty in ward no. 27. Patient Chandrakala Danial Alhat was brought to Sassoon Hospital on 25.04.1990 at 02.15 pm by her brother-in-law Prasanna. On admission, she was examined by Dr. Goel. She was also present when Dr. Goel was examining patient Chandrakala. Patient Chandrakala disclosed that she was at home with her husband, husband's second wife. Patient had 6 months old baby, which she did not give to her husband and the 2nd wife and for that she was beaten up by her husband

and the 2nd wife poured kerosene on her person and set her on fire. Her brother-in-law tried to save her by pouring water and tried to put off the flames. She has given history of constant friction and fights with husband and his 2nd wife. When this was disclosed to Dr. Goel by the patient, she was by her side only. Dr. Vanita Goel reduced this into writing. Then this witness deposed that Chandrakala's dying declaration was recorded at 04.00 pm on 25.04.1990. That time she was conscious and oriented. There is endorsement of Dr. Goel on dying declaration.

In the cross-examination, advocate for defence has put question that whatever evidence tendered by you in respect of MLC case of Chandrakala Danial Alhat is on the basis of case papers produced before the Hon'ble Court? to which this witness answered that, she was present when Chandrakala gave the history to Dr. Goel. She was by her side. Then this witness stated that she was on duty in ward no. 27. On that day she was present in the ward and by the side of patient Chandrakala when the history was recorded by Dr. Goel since record pertaining to her presence in ward no. 27 is there,

there is no need to maintain separate record to the effect that she was present by the said of Chandrakala at the relevant time. Then certain suggestions were given to this witness that history was given by a person by name Maruti Sakharam Gaikwad, she is deposing falsely that patient was oriented while her statement was being recorded, she was not present when dying declaration was recorded, history appearing in MLC papers is not given in her presence, all these suggestions were denied.

32. The defence has examined one witness i.e., Smt. Usha Laxman Shinde (DW 1). This witness deposed before the Court that she knows accused nos. 1 and 2 sitting in the dock. They are resident of Vishrantwadi. In between her house and house of both the accused, there are 4 to 5 houses. The locality where they reside is mainly Zopadpatti area. Accused no. 1 and 2 are husband and wife. She was knowing the deceased Chandrakala. Chandrakala was the 2nd wife of accused no. 1. At the time of incident, deceased Chandrakala was residing in the house of accused no. 1 at Vishrantwadi. On that day she returned to her house after work at

about 12.00 noon. When she so returned she heard shouts from the backside door of her house. Such shouts were coming from the side of house of accused. Then she went there to see as to what matter is there. When she reached at the spot, she saw that 10 to 15 persons were gathered at the spot. She saw Chandrakala coming out of her house with flames on her person. She collapsed in the courtyard of her house in that condition. Accused no. 1, Papa, herself, and other poured water on the person of Chandrakala and extinguished fire. She inquired with Chandrakala by going near Chandrakala as to how she was caught to fire. Chandrakala informed her that she had asked accused no. 1 to drive away the accused no. 2 from the house, to which he had refused and hence in the anger, she got herself set on fire. Other persons assembled at the spot were standing near by Chandrakala when aforesaid conversation was going on between them. Amongst the persons so assembled there was Bhagwan Sakat known to her and others.

In the cross-examination, this witness stated that after the incident police had interrogated her about the incident. During such interrogation she has

stated before the police that on her inquiry Chandrakala informed her as to how she was caught to fire as stated by her in her examination-in-chief. Then this witness denied the suggestion that she was present at the spot from the inception of incident and accused Radhika had given the child of Chandrakala in her custody, and the child was with her. She was not going for giving bath to the child of Chandrakala at her house. Then this witness denied the suggestion that at the time of giving bath to the child there used to take place talks between herself and Chandrakala and hence both accused stopped talking with her.

33. Firstly, we may deal with the issue that the death of Chandrakala being accidental, suicidal or homicidal? It is not in dispute that the deceased Chandrakala was residing with accused nos. 1 and 2 under same roof. It is also not in dispute that on fateful day i.e., 25.04.1990 Chandrakala was in the house of accused no. 1 and at about 01.00 p.m she sustained 60% burns in the house of accused no. 1. Madhuri Dattatraya Kulkarni (PW 10) who was present on 25.04.1990 at Sassoon Hospital stated that the

Chandrakala was brought by her brother-in-law Prasanna Kumar. Then deceased Chandrakala gave history to Dr. Goel that her husband i.e. accused nos. 1 and his first wife, beat her and poured kerosene and set her on fire on 25.04.1990.

34. At the cost of repetition, we may state that Chandrakala was taken to Sassoon Hospital, Pune, where K.B. Adhav (PW 3) – The Special Judicial Magistrate recorded dying declaration in presence of Special Medical Officer. Chandrakala stated that her husband i.e., accused no. 1 beat her and accused no. 2 poured kerosene on her person and set her on fire. It also came on record that in the the history recorded by Dr. Goel is the stated by deceased that deceased had 6 months old baby which she did not give to her husband's 2nd wife and for that she was beaten up by her husband and the 2nd wife poured kerosene on her person and set her on fire.

35. In the spot panchnama, it can be seen that when panchnama was drawn at that time there was kerosene smell on the floor. One stove, one match box,

one shirt, one payjama, 2 quilts, 2 gunny bags, burnt clothes, broken pieces of bangle, the beads of mangalsutra, yellow colour earrings were found. If we consider, overall evidence on record, it can be said that Chandrakala did not sustain 60% burns accidentally or her attempt was to commit suicide.

36. It is the the submission of learned Counsel appearing for the Appellants that the deceased was tutored. But, it can been seen from the record that the history was immediately recorded by Dr. Goel. Not only this, dying declaration was immediately recorded at Sassoon Hospital, only in presence of medical officer. Thus, it can safely be said that deceased had no occasion to meet with other witnesses and was not tutored. Considering this aspect, we are unable to accept the submission that the dying declarations are doubtful or victim was tutored.

37. Considering the above referred material and evidence, it can be stated that the death of deceased Chandrakala was a homicidal and the Appellants are the author of crime.

38. Considering the evidence brought on record, we are unable to accept the submissions of learned Counsel for the Appellants and we find considerable merit in the submissions of learned APP. Thus, Appeal is devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)