

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

CRIMINAL APPEAL NO. 193 OF 2020

Sudarshan Narayan Mengade
Age : 30 years, Occu.: Service,
R/o.: Sasane Vasti, Galli No.4,
Mohamadwadi, Hadapsar, Pune
Presently at Yerwada Central Prison

**... Appellant
(Ori. Appellant)**

Versus

The State of Maharashtra

**... Respondent
(Ori. complainant)**

...
Mr. Vikas Balasaheb Shivarkar, for the Appellant.
Mr. A.R. Kapadnis, A.P.P. for the Respondent-State.
...

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

***RESERVED ON : AUGUST 03, 2022
PRONOUNCED ON : SEPTEMBER 27, 2022***

JUDGMENT (Per : Sharmila U. Deshmukh, J) :

1. The appeal takes exception to the judgment and order dated 07.12.2019 passed by the learned Sessions Judge, Pune in Sessions Case No.784 of 2015, whereby the appellant has been convicted and sentenced as under:

- (i) for the offence punishable under Section 302 of the Indian Penal Code (for short, “IPC”), to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo further simple imprisonment for three months.
- (ii) for the offence punishable under section 316 of the IPC, to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo further simple imprisonment for three months.

2. The appellant was acquitted of the offence punishable under Section 498A of the IPC.

3. Briefly stated, the case of the prosecution is as under:

. Appellant got married to Sheetal (deceased) on 08.02.2015. After the marriage, Sheetal was being ill-treated by Appellant and her in-laws and there was demand for motorcycle and open plot at Uruli Kanchan; that it was demanded that Sheetal (deceased) should bring a sum of Rupees Four Lakhs from her parents; that the father of Sheetal (deceased) had taken her to the maternal house, where she stayed for 15 days; and that on 01.09.2015, the Appellant had taken Sheetal (deceased) back to Pune assuring her father that he will treat her properly.

. On 05.09.2015, at 00:15 hours, Sheetal (deceased) was in her house, when her husband Sudarshan Mengade (Appellant) came home. When Sheetal (deceased) told the Appellant that she wanted to go to her parents house, the appellant started quarrelling with her. The appellant told Sheetal (deceased) that she should bring money from her parents and started assaulting her. Sheetal (deceased) told the appellant that she is pregnant, however, the appellant continued to assault her. The appellant then brought the stove and poured kerosene from the stove on Sheetal (deceased). Thereafter, the appellant threw a lit matchstick on Sheetal, however, Sheetal quickly extinguished the matchstick. Thereafter, Sheetal (deceased) was sitting for some time and then proceeded towards the bathroom for the purpose of changing her saree and taking a bath. At that time, the appellant said that she will not be saved this time and that he will not keep her alive, and saying so, while Sheetal (deceased) was proceeding towards the bathroom threw a lit matchstick from behind. As a result, Sheetal's saree caught fire, and Sheetal (deceased) started shouting. Hearing her shouts, the neighbours gathered. The Appellant told Sheetal (deceased) to tell everybody that while she was cooking food, due to explosion of the stove, she sustained burn injuries. The appellant further threatened Sheetal (deceased) that if

she does not say so, he will not take her to the hospital. It is only when Sheetal (deceased) agreed, that the Appellant took Sheetal to the hospital.

4. On 05.09.2015, Sheetal (deceased) was admitted to the Sasoon Hospital, Pune by the Appellant. Sheetal gave her statement (Exh.25), on 05.09.2015, to PW-1-PSI- Veenath Saudagar Mane, pursuant to which an FIR under Sections 498A and 307 of the IPC came to be registered as against the Appellant. During the course of medical treatment, Sheetal expired on 09.09.2015 and the offence of Section 307 was altered and Sections 302 and 316 of the IPC came to be added as against the Appellant in CR No. 225 of 2015 registered with the Wanawadi Police Station.

5. Since the offence was triable exclusively by the Court of Sessions, the case was committed to the Court of Sessions for trial. Charge was framed as against the Appellant for the offences punishable under Sections 302, 316 and 498A of the IPC, to which the Appellant pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case, examined 8 witnesses viz. (i) PW-1- Veernath Saudagar Mane, Beat Incharge attached to Mohmedwadi Police Chowky, who recorded the statement/dying declaration of Sheetal (deceased), (Exh.25) which was treated as an FIR; (ii) PW-2 Ramesh Raghunath Lonkar, father of Sheetal (deceased); (iii) PW-3 - Anil Vasant Pawar, the owner of the house, in which the Appellant and deceased were living as tenants; (iv) PW-4 -Anil Laxman Dangmali, panch to the spot panchanama; (v) PW-5-Anil Laxman Dangmali, again a witness to the seizure of clothes (of accused) panchanama; (vi) PW-6-Satish Dnyaneshwar Naikare, neighbour of the appellant; (vii) PW-7-Dr.Harish Suresh Tatiya, who conducted the post-mortem of Sheetal (deceased); (viii) PW-8 - Dattatray Vishnu Thakur, API, who conducted the investigation; and (ix) PW-9-Dr.Rohitkumar Pande, who examined Sheetal (deceased) at Sassoon Hospital, when she was admitted.

7. The Appellant examined his father DW-1 Narayan Kishanrao Mengade and himself as defence witnesses. The defence of the Appellant was that Sheetal (deceased) was under stress and tension as the foetus had a kidney problem; that Sheetal (deceased) had set

herself ablaze; and that the Appellant had also sustained burn injuries whilst extinguishing the fire.

8. After considering the evidence on record, the Learned Sessions Judge convicted the Appellant for the offences punishable under Sections 302 and 316 of the IPC and acquitted him of the offence punishable under Section 498A of IPC.

9. The Learned Counsel for the Appellant assailed the impugned judgment and order on several grounds; that the dying declaration(Exh 25) suffered from several infirmities; that the Doctor certifying the fitness of the patient was not examined by the prosecution, which is fatal to the case of the prosecution in as much as the endorsement of the Doctor , on the dying declaration (Exh.25), mentions the date as 6.15 a.m., whereas, as per PW-1 (the Police Officer), the recording of the dying declaration started at 5.30 a.m. and concluded at 6.15 a.m; that the dying declaration is required to be recorded by the Magistrate as per Rule 171/2, Part III, Police Manual; that considering the nature of injuries sustained by Sheetal (deceased), it cannot be conclusively established that Sheetal (deceased) was set ablaze by the Appellant.

10. The Learned counsel for the Appellant relied upon the following judgments:

- (i) Judgment of the Delhi High Court in ***Criminal Appeal No. 676 of 2001***, in the case of ***Jagmohan (appellant) vs. State (respondent)*** and in particular on paragraph nos 22 and 23 of the said judgment;
- (ii) Judgment of the ***Supreme Court 2005 Cri.Law Page 120***, in the case of ***State of Maharashtra vs. Sanjay D. Rajhans***;
- (iii) Judgment of the Bombay High Court in ***Criminal Appeal No 524 of 2011***, in the case of ***Hanumant Bhiva Chavan (appellant) Vs. State of Maharashtra (Respondent)***.

11. The Learned APP supported the Judgment and Order of conviction and sentence and submitted that no interference is warranted.

12. The learned APP has relied upon the following judgments:

- (a) Judgment of the Apex Court i.e. ***Criminal Appeal No. 485 of 2012***, in the case of ***Uttam vs. State of Maharashtra*** ;
- (b) Judgment of the Apex Court in ***Criminal Appeal No. 78 of 2010***, in the case of ***Jayamma & Anr. vs. State of Karnataka***.

13. Heard the learned Counsel appearing for the parties. Perused the papers with the assistance of the learned Counsel appearing for the parties.

14. In the present case, the question which arises for our consideration is :

“Whether death of Sheetal (deceased) was homicidal or suicidal and whether the prosecution has proved its case beyond reasonable doubt ?”

15. The statement/dying declaration (Exh.25) of Sheetal (deceased) has been recorded by PW-1, PSI Veernath Sudagar Mane. PW-1 has deposed that in the year 2015, he was working as Beat In-charge in Mohamad Ali Police Chowki coming under the jurisdiction of Wanawadi Police Station; that on 05.09.2015, at about 3.00 a.m., he received a phone call from the Police Chowky to come to Sassoon Hospital to attend a Medico-Legal Case (MLC); that he went to the Burns Ward No.25, Sassoon Hospital, where the doctor showed him Bed No.16; that he was informed that the name of the patient was

Sheetal Sudarshan Mengade; and the lady told him that she wants to give her statement. PW-1-Veernath has further deposed that the doctor examined Sheetal (deceased) and told him that the patient was in a position to give her statement, and, therefore PW-1 recorded the statement of the patient.

16. According to PW-1, Sheetal (deceased) narrated to him, that on 05.09.2015, when she was in the house, the appellant came into the house; that he started to quarrel with her, when she told him that she wanted to go to her parents house; that the appellant told her that she should bring money from her parents and he started to assault her; that thereafter, the appellant brought a stove containing kerosene and poured it on her person; that he threw a lit matchstick, stating that he will not keep her alive; that she extinguished the matchstick thrown on her by the appellant; that when she was going to the bathroom for changing her Saree, the Appellant threw a lit matchstick from behind, pursuant to which her saree caught fire; that upon hearing the shouts of Sheetal (deceased), the neighbours gathered; that the appellant asked her to say that she caught fire, while cooking food otherwise he will not take her to the hospital; that the appellant took her to the hospital when

Sheetal (deceased) agreed to say so; that the appellant had purchased a motorcycle by selling her 'Rani Haar' given to her in marriage by her parents; and that the Appellant was harassing her to bring money.

17. PW-1 has further deposed that the doctor was present when the statement of the patient was recorded and after finishing the statement, the doctor again examined the patient and endorsed that the patient was conscious and in a position to give the statement; that after the signature of the patient, the doctor had put his endorsement; that at the time of recording of statement, PW-1, doctor and the patient only were there; that the recording of statement (Exh.25) started at 5: 30 a.m. and ended at 6:15 a.m.

18. In the cross examination of PW-1, nothing material is elicited and there is nothing to disbelieve that PW-1 had recorded the dying declaration of Sheetal (deceased). However, the question arises whether the dying declaration can be considered to be reliable, considering that in the dying declaration the reasons narrated for setting Sheetal (deceased) ablaze are contrary to each other, and, the other evidence on record regarding the reason for setting Sheetal (deceased) ablaze are contradictory to the dying declaration.

19. PW-2 Ramesh Raghunath Lonkar (Exh.27), father of Sheetal (deceased) has deposed that at the time of the marriage of Sheetal (deceased) with the appellant, PW-2 had given two lakhs as dowry and 'Rani Haar' to Sheetal (deceased); that initially, Sheetal was treated well for about 2 to 3 months by her in-laws and thereafter, she was ill-treated by the appellant and her in-laws on account of money; that they were harassing Sheetal (deceased) for purchase of a motorcycle and for an open plot at Urali Kanchan; that they had demanded four lakhs; that the appellant had taken 'Rani Haar' from Sheetal (deceased), and, mortgaged the said 'Rani Haar' with the Bank and purchased the motorcycle; that the appellant continued to harass Sheetal (deceased) for purchase of plot at Uruli Kanchan; that upon receiving phone call on 05.09.2015, at about 3.15 a.m, he (PW-2), his wife, and son Deepak went to the Sassoon Hospital at 11.00 a.m; that Sheetal (deceased) told him that her husband Sudarshan (appellant) had poured kerosene from the stove on her person and set her ablaze with a matchstick, as there was demand of money.

20. In the cross examination, PW-2 has admitted that Sheetal (deceased) had undergone sonography on 01.09.2015 at Gurukripa

Diagnostic Centre, Jalna Road, Beed. Suggestions were given to PW-2 that the Doctor at the Diagnostic Centre had informed that the foetus had a kidney problem and after learning about it, Sheetal (deceased) used to be under tension, however he has denied the same. The endeavour of the cross-examination of PW-2 was to establish that Sheetal (deceased) was under stress as the foetus had a kidney problem.

21. PW-3 is the owner of the house in which the appellant and Sheetal (deceased) were residing as tenants. PW-3 has deposed that on 04.09.2015 at about 10:00 a.m. to 10.15 a.m. he was sleeping after taking his meal; that about 12.00 a.m. to 12.30 a.m. he heard noise of something falling and also heard cries from the house of the appellant; that when he went there, he found that Sheetal (deceased) had sustained burn injuries and that the fire had already been extinguished; that Sheetal (deceased) was saying that her husband was asking money for purchase of a plot and he had poured kerosene on her person and set her ablaze; that the appellant had taken Sheetal (deceased) to the hospital on his motorcycle.

22. It has come in the evidence of PW-3 that in the year 2015 the Appellant and Sheetal (deceased) were residing in his house as

tenants. PW-3 has deposed that he went to Appellant's house when he heard noise of something falling and cries. As PW-3 was residing in the same house, there was no delay in reaching the Appellant's house where he found that the fire was already extinguished. PW-3 has admitted in the cross examination that the Appellant had sustained burn injuries on his hands while extinguishing the fire. Evidence of PW-3 reveals that the fire was immediately extinguished by the Appellant and in the process the Appellant had suffered burn injuries.

23. PW-6-Satish Dnyaneshwar Naikare (Exh.37), neighbour of Sheetal (deceased), has deposed that on 04.09.2015, he heard shouts from the house of the appellant; that on hearing the shouts, he and his wife came out, and, the public had gathered there; that the lady was shouting that her husband had poured kerosene on her and set her ablaze; that her husband was demanding money from her for purchasing a flat; and that her husband (appellant) had taken her to the hospital on the scooter.

24. PW-7- Dr. Harish Suresh Tatiya (Exh.38), Assistant Professor, Forensic Medicine, Sassoon Hospital was examined to prove the Post Mortem Report (Exh.39). PW-7 has deposed that the burn

injuries on Sheetal (deceased) were on Neck, face 2%, chest and abdomen 16%, right upper limbs 9%, left upper limbs 5%, right lower limb 13% and left lower limb 13% and total burn injuries were 58%. PW-7 has further deposed that the cause of death was stated to be 'shock due to burns'.

25. In the cross examination, with respect to the extent of injuries sustained by Sheetal (deceased), PW-7 has admitted that there were no burn injuries on the back (below neck and above waist) of Sheetal (deceased), ; that there was no burn injury on back portion of head and waist of Sheetal (deceased) and that in PM Report (Exh 39) the back injuries are mentioned as 00%.

26. PW-8 – Dattatray Vishnu Thakur (Exh.43) the Investigating Officer was examined to prove the spot panchnama (Exh.31), seizure panchama(Exh.36) and arrest panchanama (Exh.44). PW-8 has deposed that since he was deputed to Nagpur for giving evidence in the Court, temporarily investigation was handed over to Shri Ambhore, H.C., B.No.2235; that Shri Ambhore had issued a letter dated 10.09.2015 to Muthoot Finance for handing over documents of mortgage of 'Rani

Haar'; that the documents were collected from Muthoot Finance; that after completion of the investigation, the charge-sheet was filed.

27. The cross examination of PW-8 brings out admissions on certain vital aspects. PW-8 has admitted that the front portion of petticoat (Article E) was burnt; that the mother of Appellant had obtained loan from Asmita Mahila Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit (Exh-50) and the Appellant was sanctioned loan of Rs 65,000/, and the motorcycle was purchased by Appellant on 28.08.2015; that during investigation he did not come across any information that the Appellant had agreed to purchase any plot at Uruli-Kanchan. PW-8 further admits that he has placed on record the sonography report of Sheetal (deceased) conducted on 01.09.2015, and medical report of Ayurvedic Rugnalay, Sane Guruji Arogya Kendra and that he has neither gone through the reports nor made any enquiry with the medical officers.

28. The evidence of PW-2 and PW-8 reveals that sonography test was undergone by Sheetal (deceased) on 01.09.2015 i.e. four days prior to the incident. Although the reports of the Diagnostic Centre and Ayurvedic Rugnaylay were procured by PW-8, no investigation was

carried out to ascertain the findings recorded in these reports. Suggestions were given to PW-2 and PW-8 that the foetus had a kidney problem and Sheetal (deceased) was under stress due to the medical problem of the foetus, which were denied by PW-2 and PW-8.

29. The loan documents of Asmita Mahila Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit(Exh 50), procured during investigation, reveals that Appellant had obtained loan of Rs 65,000/, and the motorcycle was purchased by Appellant on 28.08.2015. In light of this evidence, prosecution's case of the Appellant setting Sheetal ablaze due to non fulfillment of his demands appears to be shaky. Pertinently, Ld. Sessions Judge has rightly disbelieved the version of PW-2- father of Sheetal (deceased) about demand for motorcycle and plot at Uruli-Kanchan and acquitted the Appellant of offence under Section 498-A.

30. The Appellant's case in his statement recorded under Section 313 of the Code of Criminal Procedure is that of total denial and false implication. The Appellant has examined his father- Narayan Kisanrao Mengade and himself as defence witnesses.

31. DW-1-Narayan Kisanrao Mengade has deposed that after the marriage of Appellant and Sheetal (deceased), there were quarrels between them. Sheetal (deceased) was not willing to co-habit with the Appellant and she had gone to her maternal house; that at the instance of her father, the Appellant and Sheetal (deceased) started residing separately; that there were still quarrels between them and Sheetal (deceased) again went to her maternal house; that Appellant brought her back on 01.09.2015. DW-1 has further deposed that on 04.09.2015 at about 2 am he received a phone call from Appellant that Sheetal (deceased) had set herself ablaze; that he asked the Appellant to hospitalize her and she was admitted to Sassoon Hospital. DW-1 has further deposed that he reached Sasson Hospital and met Sheetal (deceased) and she herself informed him that in a fit of anger she set herself ablaze.

32. DW-1- Narayan Kisanrao Mengade has specifically deposed that he was informed by Sheetal herself that she had set herself ablaze. Pertinently, there is no cross examination of DW-1 on this aspect of deposition and the same remains uncontroverted. There is no cross-examination or even suggestion given to DW-1 in his cross examination

about the ill-treatment and demands made by the Appellant and his family members, which is the prosecution's case for connecting Appellant to the offence under Section 302 of IPC.

33. DW-2-Appellant has deposed that after his marriage with Sheetal (deceased), there were disputes between them and that after every quarrel, Sheetal (deceased) would say that she wanted to go to the village; that she did not want to reside with him and that she did not accept the marriage. He has stated that as they were newly married, he would explain to Sheetal (deceased); that he had informed of the same to Sheetal's father, however he did not take it seriously; that later on Sheetal (deceased) went to her maternal house 4-5 times, but there was no change in her behaviour; that on making enquiry they learnt that Sheetal (deceased) was married earlier and had obtained a divorce after 21 days of marriage; that her previous husband had also made a complaint to the police station, that Sheetal (deceased) used to threaten to commit suicide; that he tried explaining to her and started residing separately from his parents at Hadapsar; that they stayed there only for a month, as Sheetal (deceased) started quarelling with the owner of the house, they were asked to vacate the room; that on

the 4th day of changing the room, the incident happened; that on 05.09.2015, he had come back from work at about 12.00 in the night; that Sheetal (deceased) told him that she wanted to go to her mothers house and wanted to terminate her pregnancy, as the foetus was having some disability; that he told Sheetal (deceased) that there are good doctors in Pune and they would take treatment in Pune; that they phoned her father and he also suggested to stay in Pune; that they went to sleep after taking meal and after 10 to 15 minutes, Sheetal (deceased) went to another room and poured kerosene from the stove and set herself ablaze; that as soon as he heard voice of stove, he immediately went to rescue her and poured water on her person; that while rescuing her, he too sustained burn injuries on his right hand; that he immediately took her to Saneguruji hospital and as there was no doctor and ambulance, hence he took her to Sassoon Hospital. DW-2 has further deposed that he admitted Sheetal (deceased) and that he too was hospitalized and was medically treated there; that he received a phone call from the Wanwadi Police Station, pursuant to which he informed them about the incident.

34. Pertinently, the evidence of Appellant that on the day of incident, Sheetal told him that she wants to go to her mother's house and to terminate the pregnancy as foetus had some disability; that he suggested that they stay in Pune and take treatment and that they phoned her father who also suggested to stay in Pune has gone uncontroverted. It is extremely pertinent to note that while conducting the cross examination of DW-2, prosecution has asked certain questions which support the case of the Appellant i.e. that whenever Sheetal (deceased) would quarrel with the Appellant, he would never get angry; that the Appellant was taking Sheetal to doctor for sonography and that after her pregnancy diagnosis, four or five times, Appellant had taken her for sonography. From the evidence of Appellant, it appears that the Appellant was taking good care of Sheetal (deceased) and the fact that Sheetal was taken for sonography for about four to five times reveals that the foetus had some medical problem. Appellant has denied the suggestion, that the doctor had not informed them, that the foetus was having some disability. Although the Appellant, had deposed about the quarrelsome nature of Sheetal (deceased), about her previous marriage, about the threats of suicide given by her to her previous husband and the fact, that the Appellant had himself suffered burn injuries, there is

no cross-examination on this aspect by the prosecution. It is the consistent case of the Appellant that the foetus had some issues and due to the same, Sheetal (deceased) was under stress/tension which is not shaken in the cross examination.

35. We find the evidence adduced by the Appellant cogent and reliable. DW-1 has specifically deposed that when DW-1 went to Sasson Hospital, Sheetal (deceased) informed him that in fit of anger she had set herself ablaze. There is no reason to disbelieve the evidence of DW-1 and DW-2 which establishes that Sheetal (deceased) had set her ablaze. Prosecution and Defence witnesses are entitled to equal weightage. As held by Apex Court in the case of ***Dudh Nath Pandey vs The State of U.P. reported in 1981 AIR 911:***

“ Defence witnesses are entitled to equal treatment with those of the prosecution and Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often they tell lies but so do the prosecution witnesses.”

36. The case of prosecution rests on circumstantial evidence. In ***Sharad Birdhichand Sarda vs. State of Maharashtra***, reported in (1984)

4 SCC 116, the Apex Court has laid down the five golden principles (Panchsheel) which govern a case based only on circumstantial evidence.

Para 153 of the said judgment is reproduced hereinunder:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra 10 where the following observations were made: [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
- (3) the circumstances should be of a conclusive nature and tendency,*

- (4) *they should exclude every possible hypothesis except the one to be proved, and*
- (5) *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

37. The prosecution relies on the following circumstances in support of its case;

- (a) Motive;
- (b) Dying Declaration;
- (c) The evidence of PW-1, PW-2, PW-3 and PW-6.

38. As far as motive is concerned, there are material contradictions between the statement/dying declaration given by Sheetal (deceased), the statement of PW-2-father of Sheetal (deceased) and the statements of PW-3 and PW-6 regarding the alleged demands by the Appellant. The demands vary from money to purchase of motorcycle and plot of land to flat, whereas in the dying declaration, Sheetal (deceased) has stated that the demand was for money for her expenses.

39. As far as the dying declaration (Exh.25) of Sheetal (deceased) is concerned, in our opinion there are several infirmities and reliance cannot be implicitly placed on the said dying declaration to sustain the conviction of the Appellant. In this context, it will be apposite to refer to law on dying declaration summarised by Apex Court in case of ***Smt. Paniben v. State of Gujarat*** reported in ***1992 AIR SCW 2050*** :

“17. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction

unless it is corroborated. The rule requiring-corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Mannu Raja v. State of U.P. (1976) 2 SCR 764) (AIR 1976 SC 2199).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed

Beg v. State of Madhya Pradesh, (1974) 4 SCC 264: (AIR 1974 SC 332).

(v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., AIR 1982 SC 1021).*

(vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P., 1981 SCC (Crl) 581).*

(vii) *Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).*

(viii) *Equally, merely because it is a brief statement it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505).*

(ix) *Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical*

opinion cannot prevail. (Nanahau Ram v. State, AIR 1988 SC 912)."

40. Applying the principles set out by the Apex Court in the case of Paniben (supra), we have carefully scrutinized the dying declaration against the background of the evidence of the witnesses. In our opinion, the dying declaration suffers from the following infirmities:

- (i) The alleged reason narrated in the dying declaration of Sheetal (deceased) that led to the incident on 05.09.2015 appears to be doubtful. Sheetal has stated that the cause of dispute on the fateful day, was that the Appellant demanded motorcycle and money for expenses to be brought by Sheetal (deceased) from her parents. In the same statement, Sheetal (deceased) has stated that on 19.08.2015, the Appellant had already purchased the motorcycle by selling her "Rani Haar", and hence, the demand for motorcycle cannot be believed to be the reason for the incident. Documentary evidence reveals that the Appellant was sanctioned loan of Rs 65,000/ through Asmita Mahila Gramin Bigar Sheti Sahakari Path Sanstha Maryadit and the motorcycle was purchased on 28.08.2015.
- (ii) It has come from the evidence on record that the Appellant had suffered burn injuries while trying to extinguish the fire. The statement given by Sheetal is a detailed statement,

however, Sheetal (deceased) has not disclosed the fact, that the Appellant had attempted to extinguish the fire.

- (iii) Sheetal (deceased) has stated that after the incident, her husband told her to tell everybody that she caught fire while cooking food or else he would not take her to the hospital. It is pertinent to note that Sheetal (deceased) has stated that after she caught fire, she shouted and the neighbours gathered. It appears improbable that in front of the neighbours, the Appellant would ask her to falsely say that she caught fire while cooking.

41. The oral dying declaration given by Sheetal (deceased) to PW-2, father of Sheetal (deceased), PW-3, owner of the house where the Appellant and Sheetal were residing as tenants and PW-6, neighbour of Sheetal (deceased) contradict each other as regards the reason given by Sheetal for being set ablaze by the Appellant. PW-2 has deposed that Sheetal told him that the Appellant was asking for money, PW-3 has deposed that while being taken to the hospital, Sheetal was saying that Appellant was asking money for purchase of plot and PW-6 has deposed that Sheetal was saying that Appellant was demanding money for purchase of flat.

42. In our opinion, implicit reliance cannot be placed on the dying declaration considering that not only there are contradictions in the dying declaration as to the reason for setting Sheetal (deceased) ablaze but the dying declaration is also contrary to the oral dying declaration given to PW-2, PW-3 and PW-6. We find that in the dying declaration there is no mention of Appellant demanding plot or flat.

43. The failure on part of the prosecution to examine the Doctor certifying the fitness of Sheetal (deceased) to give the statement, particularly in view of the discrepancy in the timing of the endorsement of the Doctor, renders the dying declaration vulnerable. We are conscious of the settled position in law that the non examination of the certifying Doctor does not render the dying declaration doubtful. Although not mandatory, it is a rule of prudence that the certifying Doctor be examined to prove the fitness of the patient. It must be borne in mind that the dying declaration is a piece of untested evidence and the Accused has no occasion to cross examine the maker of the statement, which implicates him.

44. A perusal of the Post Mortem Report (Exh 39) reveals the following injuries:

“(1) Superficial to deep burns present with purulent and oedematous oedematous exudates, as in distribution of
Head Neck face – 02% (only part of anterior aspect of neck burnt)
Chest +Abdomen – 16% (Sparing area around umbilicus.
Right upper limb – 09%
left upper limb – 05% (Lateral aspect spared at places)
Right lower limb – 13% (Sparing lower one third of leg and whole foot)
left lower limb – 13% (sparing lower one third of leg and whole foot)
Back – 00%
Genitals – 00%
Total – 58% (fifty eight percent).”

45. Considering that Sheetal (deceased) had not suffered any injuries on back portion of her body, the prosecution’s case that the Appellant threw lit matchstick from behind which caused Sheetal’s saree to catch fire appears to be doubtful. Even the PM report does not corroborate the dying declaration.

In our opinion, the Sheetal (deceased), being doused in kersone, upon being subject to a lighted matchstick from her back will necessarily sustain burn injuries on her back. The circumstance that only the front portion of the body is burnt leads to an inference that the

probability of the person setting himself / herself on fire cannot be ruled out. It is the case of the prosecution that the Appellant had thrown a lit matchstick on Sheetal (deceased) from behind.

46. The deposition of the Appellant on the aspect of the burn injuries suffered by him whilst extinguishing the fire is supported by arrest panchnama (Exh.44) which shows that the appellant had sustained burn injuries. The deposition by PW-3 (owner of the house) that when he entered the house, the fire was already extinguished and that the Appellant had suffered burn injuries corroborates the Appellant's case.

47. The normal human conduct of a person, who is not the perpetrator of the crime, in the case of having witnessed a person on fire, is to immediately extinguish the fire and to take the patient to the hospital. In the present case, we find that the Appellant had immediately extinguished the fire and had taken Sheetal (deceased) to the hospital, initially Saneguraji Hospital and as there was no doctor there, to the Sasoon Hospital. This conduct of the Appellant is inconsistent with the hypothesis of guilt of the Appellant.

48. It is cardinal principle of criminal jurisprudence that the evidence on record should exclude every hypothesis of innocence and should only point to the guilt of the accused. In case of dying declaration, it is necessary that the Court should be satisfied from the material on record that the dying declaration is truthful, voluntary and does not suffer from any infirmity.

49. Considering the aforesaid, we find that the death of Sheetal (deceased) was suicidal and not homicidal.

50. In our opinion, the prosecution has failed to prove that the death of Sheetal (deceased) was homicidal and hence, the judgment and order of the learned Sessions Judge dated 07.12.2019 convicting and sentencing the appellant cannot be sustained.

51. We, accordingly pass the following order:

:: ORDER ::

- (i) The Criminal Appeal is allowed.

- (ii) The impugned Judgment and Order dated 07.12.2019 passed by the learned Additional Sessions Court, Pune in Sessions Case No. 784 of 2015 is quashed and set aside.
- (iii) The Appellant is acquitted of the offences, with which he is charged. The Appellant is set at liberty forthwith, if not required in any other case. Fine amount, if paid, be refunded to the Appellant.

52. Appeal is allowed and accordingly disposed of;

53. All concerned to act on the authenticated copy of this judgment.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.