

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.40 OF 2016

Rajesh Bhikaji Gade,
Age 35 yrs., Occ. Labour,
R/o Bhim Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed.

... Appellant

... Versus ...

The State of Maharashtra
Through Police Station Officer,
Police Station, Majalgaon (City),
Tq. Majalgaon, Dist. Beed.

... Respondent

...

Mr. S.J. Salunke, Advocate for appellant

Mrs. V.S. Choudhari, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI
Y.G. KHOBRADE, JJ.

RESERVED ON : 09th MARCH, 2023

PRONOUNCED ON : 03rd MAY, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

convicted by learned Additional Sessions Judge, Majalgaon, Dist. Beed by Judgment and order dated 22.01.2016 in Sessions Case No.46/2014. Appellant/accused has been held guilty of committing offence punishable under Section 498-A and 302 of the Indian Penal Code, 1860.

2 Before we proceed, we would like to place some admitted facts on record in order to avoid repetition. Deceased Jayshree was the wife of present appellant. They got married about 11 years prior to First Information Report dated 07.05.2014. They have one daughter and two sons. They used to reside at Bhim Nagar in Majalgaon. Parents of deceased Jayshree are residents of village Gangamasla, Tq. Majalgaon. It is further an admitted fact that deceased Jayshree had lodged First Information Report against the accused and his relatives about three years prior to the First Information Report and the case was pending for a considerable period. It was then withdrawn/settled and deceased Jayshree started cohabiting with accused/appellant with their children.

3 It is the prosecution story that Jayshree had sustained burn injuries on 06.05.2014 around 8.00 p.m. and she was taken to Majalgaon hospital and then admitted to Civil Hospital, Ambajogai. Her first Dying Declaration Exh.43 was recorded between 1.30 a.m. to 2.00 a.m. on

07.05.2014 by the police on duty at Police Chowky in Civil Hospital, Ambajogai. Thereafter, on the same day between 4.15 a.m. to 4.40 a.m. second Dying Declaration Exh.63 came to be recorded by Executive Magistrate at Civil Hospital, Ambajogai. Her third Dying Declaration Exh.73 has been recorded by Investigating Officer from Majalgaon city Police Station between 6.00 to 6.30 p.m. on 10.05.2014. The first Dying Declaration Exh.43 has been treated as First Information Report and offence under Section 307 came to be registered against the present appellant, however, when second Dying Declaration Exh.63 showed the involvement of the relatives i.e. mother-in-law, father-in-law and brother-in-law, they were added as accused Nos.2 to 4 and investigation was started. The panchnama of the spot was executed and the accused No.1 came to be arrested. It appears that the other accused persons were released after nominal arrest in view of the anticipatory bail they had secured. The seized articles from the spot as well as the clothes of the accused No.1 were sent for chemical analysis, statements of the witnesses came to be recorded and after the completion of the investigation charge sheet was filed. Accused No.1 i.e. present appellant was not released on bail throughout the trial. After considering the evidence on record and hearing both sides, the learned Trial Judge held the present appellant guilty, as aforesaid. For the offence punishable under Section 498-A of the Indian Penal Code the appellant has

been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer simple imprisonment of two months. Further, for the offence punishable under Section 302 of the Indian Penal Code the appellant has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two Thousand only), in default to suffer simple imprisonment of four months. Both the sentences have been directed to run concurrently. Accused Nos.2 to 4 stood acquitted of all the charges. Hence, the original accused No.1/present appellant had filed the present appeal.

4 Heard learned Advocate Mr. S.J. Salunke for the appellant and learned APP Mrs. V.S. Choudhari for the respondent.

5 It has been vehemently submitted on behalf of the appellant that the prosecution has relied on three Dying Declarations and one oral Dying Declaration as well as the testimony of the daughter of the deceased and the appellant as eye witness. Learned Advocate for the appellant has taken us through the entire evidence and submitted that PW 1 Sayyad Babu, who is the panch to the seizure panchnama and the clothes of accused No.1, PW 7 Sayyad Salim, another panch to the said seizure panchnama of clothes of accused No.1, both have turned hostile. Further, PW 6 Akshay Salve, who

was the panch to the spot panchnama Exh.55 has also turned hostile. Though the contents of these panchnamas were also told by the Investigating Officer, those documents cannot be read in evidence. The Dying Declarations i.e. Exhs.43, 63 and 73 are inconsistent with each other. The two Dying Declarations i.e. Exhs.43 and 63 were recorded on 07.05.2014 after a gap of about 2 to 2½ hours. Whereas the third Dying Declaration has been recorded after about three days. The first Dying Declaration taken as it is i.e. Exh.43 implicates only the present appellant. Whereas, within two hours when second Dying Declaration Exh.63 was recorded, it implicated not only accused No.1 but also the other accused Nos.2 to 4. The third Dying Declaration is again only against the husband. Therefore, such inconsistent Dying Declarations ought not to have been relied by the learned Trial Judge. The Medical Officer, who had certified the fitness of Jayshree to give statement, has not been examined by the prosecution for the reasons best known to it. PW 5 Dr. Ravikumar Kamble is the Medical Officer who had conducted autopsy and he had stated that Jayshree had sustained 95% burns. PW 4 PHC Mr. Narayan Jadhav, who recorded Dying Declaration Exh.43, has stated that he had asked certain preliminary questions to ascertain the fitness of Jayshree to give statement, but those questions have not been reflected in any document, especially the Dying Declaration Exh.43 before he started recording the Dying Declaration. PW 9 Balkrishna Wanjarkhedkar – Naib

Tahsildar-cum-Executive Magistrate had recorded the second Dying Declaration Exh.63. He has stated that the contents of the Dying Declaration were read over to Jayshree but the endorsement does not say that she had admitted the contents thereof. In all the Dying Declarations it has been stated that about three years prior to the First Information Report Jayshree had lodged complaint against the husband and relatives and thereafter she was residing with her father for about one and half year. Thereafter, she was brought for cohabitation by the husband and in-laws by giving assurance that they would look after her properly. Upon the said assurance she had settled the case. It is then stated that for about one and half year she was treated properly. But then about a month prior to 07.05.2014 accused No.4 – mother-in-law went to stay with accused No.2 at Mumbai and the accused No.1 i.e. appellant started saying that because of the deceased his mother has gone to stay with another son. Accused was insisting that she should leave the house and go to her parents house. He used to assault and abuse her. On 06.05.2014 also he had picked up the quarrel on the ground that because of the deceased, accused No.3 is not returning to the house and then by pouring kerosene from chimney (home made lamp) set her to fire. If we consider those Dying Declarations, the reason given is absolutely not convincing. If the mother-in-law had gone about a month prior to the incident only, the dispute between the husband and wife would not have gone to such an

extent that husband would decide to eliminate the wife. Though the daughter of the appellant and deceased PW 3 Pranjali is supporting the prosecution story; yet, it is to be noted that her statement under Section 161 of the Code of Criminal Procedure was recorded belatedly i.e. six days after the First Information Report. It can be seen from her testimony that she was a tutored witness. She was in the custody of grandfather PW 2 Babasaheb Salve and, therefore, she has supported the prosecution story. Her testimony would show that she had watched the incident from window. However, if we peruse the spot panchnama, there is absolutely no window to the house of the accused or the place where the incident had allegedly taken place. Even PW 10 API Devkar – Investigating Officer admits that there is no window to the house of the accused from where PW 3 Pranjali is stated to have witnessed the incident. The reports of the Chemical Analyzer though showing that there were kerosene residues on the half T-shirt and full pant of the accused; yet, it is to be noted from the testimony of PW 8 Bapu Landge – Carrier that he received the packet for tendering it to the office of Chemical Analyzer on 24.06.2014. In his cross-examination he has stated that from 08.05.2014 till 24.06.2014 the seized articles were in the custody of Malkhana In-charge. Said Malkhana In-charge has not been examined. The act of sending seized muddemal to the Chemical Analyzer is belated. Possibility of tampering with the evidence cannot be ruled out. The evidence

adduced by the prosecution was not sufficient to hold that the appellant/accused has committed offence beyond reasonable doubt. Learned Advocate for the appellant relied on the decision in **Mahesh Vasant Salunke vs. State of Maharashtra [(2015) 1 Mh.L.J. (Cri.) 96]**, wherein after considering that the Dying Declarations recorded by PHC and Naib Tahsildar were not reliable, benefit of doubt was given to the accused. The ratio in this case is applicable to the present case and, therefore, the appeal deserves to be allowed.

6 Per contra, the learned APP strongly supported the reasons given by the learned Trial Judge and submitted that the prosecution story depended on the testimony of the eye witness as well as three Dying Declarations given by Jayshree as well as one oral Dying Declaration. The non examination of the Medical Officer, who gave endorsement, was not fatal to the prosecution story. In all the Dying Declarations the role of the present appellant is consistent and the story also as to how deceased caught fire. He relied on the decision in **Laxman vs. State of Maharashtra** reported in **2002 SC 2973 : 2002 6 SCC 710**, wherein the Full Bench of Hon'ble Supreme Court laid down the law on Dying Declarations and also how to deal with the multiple Dying Declarations. The said ratio is applicable here. First of all, importance will have to be given to the testimony of PW 3 Pranjali, who is

the eye witness. On the date of her examination-in-chief she was 12 years old and she appears to be aged 11 when the incident took place i.e. prior to her testimony. She has clearly stated that on the day of incident her father returned around 10.00 a.m. On that day he was having duty from 5.00 a.m. and after finishing of his duty he had returned at 10.00 a.m. under the influence of liquor and then he started saying to Jayshree that due to Jayshree his mother is not returning to Majalgaon. He asked Jayshree to leave the house but then Jayshree told him that she is not ready to leave the house. Thereafter, accused threatened to kill her. PW 3 Pranjali says that thereafter they both kept quiet. On the same day at 8.00 p.m. again the appellant raised quarrel with deceased on the same count and started beating her. The father had told daughter that she should go to the house of one Asaram Mama to bring her two brothers. She went to Asaram Mama's house but noticed that her brothers were sleeping, therefore, immediately she returned back. She noticed from window of their house that father was pouring kerosene from the lamp on the person of her mother and then the father set Jayshree to fire and gone from that place. PW 3 Pranjali has stated that she had brought water and tried to extinguish the fire. She as well as Jayshree had then shouted loudly and, therefore, one Ganesh, Asaram and some other persons came and taken her mother to Rural Hospital, Majalgaon. The testimony of the daughter is absolutely not unbelievable and, therefore,

the conviction awarded to the appellant is perfectly legal and justified. Learned APP prayed for the dismissal of the appeal.

7 From the submissions those have been made on behalf of both sides it can be seen that the case of the prosecution is based on the direct evidence of PW 3 Pranjali – daughter of deceased and accused/appellant as well as the three Dying Declarations Exhs.43, 63 and 73 (though Exh.73 has been styled as “पुखणी जबाब” , it will have to be considered as Dying Declaration while assessing the same). The testimony of PW 3 Pranjali would be important since she is the eye witness to the incident. She was 12 years old when her deposition was recorded. She has given her birth date and other details when preliminary questions were asked by the learned Presiding Officer to assess, as to whether she can be said to be the competent witness, as contemplated under Section 118 of the Indian Evidence Act. It appears that she was found to be giving rational answers and, therefore, oath has been administered to her. Her testimony has been recorded on 03.10.2015, whereas date of incident is 06.05.2014. Therefore, at the time of incident she would be around 11 years, which can be said to be of sufficient maturity to describe what has been seen. She has deposed that on the day of incident her father had attended the duty. Her father had gone for duty around 5.00 a.m. and returned around 10.00 a.m. He was under the influence of liquor at

that time and he started quarreling with mother by saying that because of her, his mother is not ready to come to Majalgaon and, therefore, she (deceased) should leave the house. Deceased told him that she will not leave the house and he can kill her in the house itself. But thereafter both of them calm down. The witness says that at that time she was having summer vacation. Thereafter around 8.00 p.m. her father again started saying to her mother that because of her, his mother is not ready to come back to Majalgaon from Mumbai. Father then assaulted mother and in the meantime father also told PW 3 Pranjali that she should go to the house of Asaram Mama and bring her brothers. As the father was beating mother, she stayed in the house, but father scolded her. Therefore, she immediately went to Asaram Mama's house and saw that her two brothers were sleeping and, therefore, immediately returned. When she returned home, while entering the house she saw from the window that father was pouring kerosene from chimney on the person of mother and then setting her to fire by igniting the match stick. She has stated that thereafter father ran from the staircase. PW 3 Pranjali says that she had tried to extinguish the fire, but mother told her that she should not come her and, therefore, she had poured two buckets of water on the person of mother and also put shawl. As they raised hue and cry, Asaram Mama, Ganesh Mama and other persons came and then took mother to hospital. The testimony of this witness has been attacked by the

learned Advocate for the appellant by saying that the spot panchnama does not show any window to the house and this fact has been got confirmed from the Investigating Officer. Important point to be noted is that in the cross of PW 3 Pranjali the said fact has not been put in the way the accused wants to convey now. The location of the window has not been asked from her. The denial is to the fact that she had witnessed the incident from the window. In other words, there is no specific suggestion to Pranjali that there is no window to their house from which the incident could have been witnessed. When the witness was available in the witness box; yet, no specific question was asked, then such indirect inference cannot be allowed to be drawn. No doubt, this witness has claimed ignorance that father had sustained burn injuries on his cheek and legs and that those injuries were when he was trying to extinguish fire on the person of mother. It has to be read from the angle that there is no suggestion to the witness that till the shifting of deceased Jayshree to hospital father was present. She has not stated that father was present at the time of taking mother to hospital. In his statement under Section 313 of the Code of Criminal Procedure the present appellant has not stated that he was along with his wife when she was taken to hospital. If he would have gone to the hospital with burn injuries, then there was no hurdle for him to get himself examined by the concerned Doctor. The injury certificate of appellant Exh.74 came to be exhibited in the cross of the

Investigating Officer. Three injuries were quoted – 1) abrasion on back of head, 2) contusion to left hand wrist joint and 3) burn injury to face, neck, on right side left foot, however, said Exh.74 is in respect of his examination by the Doctor on 08.05.2014 and the age of the injury is stated to be within 7 days. The exact co-relation has not been established and why he had not got himself examined on 06.05.2014 itself has not been explained, therefore, we cannot rely on the said certificate and infer that he was present at the time the fire was extinguished from the person of Jayshree. Further, much has been said as regards, whether it would have been possible for the girl to go to Asaram Mama's house and come back and still witness the incident. Questions have been asked to that effect, even the distance has come on record. The girl says that the distance between their house and the house of Asaram as well as Arun Salve is near about 50-60 feet. The girl was witnessing the quarrel between the parents and was able to understand that the father was asking her in anger to go away from the spot. Definitely, she might have felt something and, therefore, by going to the house of Asaram and finding that the brothers were sleeping she had returned immediately. It would have depended on the fact as to how much time the initial quarrels took place between accused and deceased, but she was certain in saying that she has witnessed the incident. The question would arise, as to why the daughter would speak against the father. It cannot be brushed aside by

saying that since now she is with the parents of deceased, she was tutored. The entire testimony of the girl would show that she has given answer to each and every question confidently and there were absolutely no signs of tutoring. If there would have been tutoring, the answers would not have been as smooth as they have been recorded. Further, the learned Presiding Officer has not taken any demeanor of the witness, suggestive of tutoring. Since the girl was sufficiently grown up she has given confident answers, which cannot be now doubted. There is no reason to disbelieve the girl. She has also corroborated to her statement before police under Section 161 of the Code of Criminal Procedure. No doubt, there are some minor contradictions as compared to the Dying Declaration. In the Dying Declaration Exh.63 she has stated that deceased had herself extinguished the fire. But it is to be noted that the next line to the said statement is that Pranjali had poured water on her person. So the presence of Pranjali at the said place and her active participation in extinguishing the fire has been stated in all the three Dying Declarations. It is definitely an unfortunate incident that the girl in her tender age witnessed the quarrels between the parents and then the father ablazing mother by pouring kerosene and then she herself was required to extinguish the fire. Further, it has been tried to be extracted from PW 3 Pranjali in her cross-examination that her grandmother (mother of appellant) had gone to Mumbai for eye surgery and it was not with an

intention not to return. The said question appears to have been asked on the background that in all Dying Declarations as well as examination-in-chief by PW 3 Pranjali it is stated that accused was blaming deceased that because of her (deceased), his mother is not returning to Majalgaon, and on that count she was put to fire. It is to be noted that, that suggestion has been admitted that accused Nos.3 and 4 had gone with accused No.2 as there was eye surgery of accused No.3 but the dates on which they had gone and since how many days they were residing there has not been brought on record. Vague suggestions cannot prove the defence. If considerable time had elapsed from the eye surgery and still the mother was not returning accused No.1 i.e. present appellant might have carried the said impression, it cannot be said that there was no dispute at all between deceased Jayshree and appellant. At the costs of repetition, we would say that the testimony of PW 3 Pranjali is trustworthy and has been rightly relied by the learned Trial Court. The sole testimony of PW 3 Pranjali was sufficient in this case to convict the appellant, for the offence punishable under Section 302 of the Indian Penal Code.

8 Now, turning towards the three Dying Declarations, those have been proved through PW 4 PHC Mr. Narayan Jadhav, PW 9 Balkrushna Wanjarkhedkar – Naib Tahsildar-cum-Executive Magistrate and PW 10 API Mr. Shivanand Devkar. Suffice it to say that the testimony of all these

witnesses would show that all the three have stated that after the intimation was received, they went to the burn ward, got the injured examined by the Medical Officer and after getting the endorsement about fitness to give statement as well as ensuring that she is in a fit state to give statement, they have recorded the Dying Declaration. In respect of the Dying Declarations, it is a settled principle of law that even a Dying Declaration can also be made basis of conviction, if it qualifies the test of truthfulness, voluntariness and free from suspicion and doubt. There are various rulings of Hon'ble Apex Court regarding evidentiary value of Dying Declaration. It has been held time and again that accused being deprived of cross-examination, Court has to be very careful and cautious while assessing Dying Declaration. It is expected that Court should be on guard that the statement of deceased was not a result of either tutoring, prompting or product of imagination. It is further expected of the Court to satisfy itself that the deceased was in a fit state of mind to give dying declaration. In the case of **Paniben vs. State of Gujarat [(1992) 2 SCC 474]**, the Hon'ble Supreme Court has laid down the principles governing Dying Declaration, which are as follows :

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Court has to scrutinize 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.

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

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(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 eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

9 The above principles are affirmed, relied, summarized and applied in various other rulings, namely, **Surinder Kumar vs. State of Punjab [(2012) 12 SCC 120]**, **Madan vs. State of Maharashtra [(2019) 13 SCC 464]**.

10 Similarly, very recently Hon'ble Apex Court in the case of **Ganpat Bakaramji Lad vs. State of Maharashtra [2018 ALL MR (Cri) 2249]**, has also

reiterated certain tests to be put to use before accepting that Dying Declaration. It has been held thus -

“In respect of the dying declaration, the general principles to be kept in mind are

(i) that it is not a weaker kind of evidence and it stands on the same footing as other evidence, and (ii) that there is no absolute rule of law that it cannot form the sole basis of conviction, unless corroborated by other independent evidence. The first step required to be taken in every case, is to consider the three-fold questions as under :

(a) Whether a declarant had an opportunity to observe and identify the assailant or the accused?,

(b) Whether a declarant was in a conscious and fit condition at the time of recording the statement?, and

(c) Whether the Court is so convinced of the truthfulness and voluntary nature of the statement of the declarant that it inspires confidence to such an extent that it can be the sole basis of conviction?

The absence of an endorsement in the dying declaration - (a) by a doctor regarding the fitness of mind of the declarant, or (b) that the statement was read over and explained to the declarant, who found it to be correct, cannot be the reason for holding that the dying declaration is unacceptable, if the Court is otherwise satisfied that such a dying declaration inspires confidence.

The rejection of the dying declaration cannot be on the solitary instance of absence of endorsement of reading over and explaining

the declaration and the declarant confirming it to be true. It will always depend upon the facts and circumstances of each case. We are clearly of the view that it will be a cumulative effect of the facts and circumstances of the case, which will determine such issues. The presence or absence of a particular fact or circumstance or a situation in a given case may become significant, whereas it may become insignificant in another case. The mode and manner of appreciation of evidence differs from case to case, though the principles of appreciation of evidence may be the same. The perception of the matter in each case and the manner of the appreciation of evidence differs from person to person. Hence, there cannot be a strait-jacket formula or hard and fast rule which can be laid down.

Neither the provision of Section 32(1) of the Evidence Act nor any decision of the Apex Court prescribe any particular format in which a dying declaration is to be recorded. It can be oral as well as written. In case of oral dying declaration, the question of existence or insistence upon reading over and explaining the declaration to the deceased does not arise. If that be so, how can such insistence be in respect of written dying declaration? It is not the requirement of any statute or of the decision of the Apex Court that a written dying declaration must contain a column to be duly filled in that the statements of the declarant are read over and explained to him and that he found it to be true and correct. Such a requirement therefore cannot be held as mandatory.

The observations in the cases of **Shaikh Bakshu 2007 ALL SCR 2407** and **Kantilal (2009) 12 SCC 498**, are based on the facts and would not, therefore, constitute a precedent or a *ratio decidendi* or even an *obiter dicta* to hold that bearing such an endorsement in the dying declaration is must. In our view, it would be unjust to reject the

dying declaration only on such hyper technical view, which hardly of any help in the matter of criminal trials.”

11 We may also consider the Constitution Bench decision of Hon’ble Supreme Court in **Laxman vs. State of Maharashtra, 2002, Cri. L.J. 4095**, wherein it was held that -

“Absence of certification of doctor as to fitness of mind of declarant will not render dying declaration unacceptable. What is essentially required is that the person who records it must be satisfied that deceased was in fit state of mind. Certification by doctor is rule of caution. The voluntary and truthful nature of declaration can be established otherwise also.”

12 It is further observed in **Laxman vs. State of Maharashtra**, (supra) that -

“It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration.”

13 Further, we may also rely on **Vikas and others vs. State of Maharashtra [2008 (2) B. Cr. C. 235 (SC)]**, wherein it has been observed that, special sanctity accorded to evidence of Dying Declaration should be

respected. Unless there are clear circumstances brought out showing that person making statement was not in expectation of death, admissibility of Dying Declaration should not be questioned. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is no evidence. Section 32(1) of the Evidence Act makes a statement of the deceased admissible. Those statements made by a person as to the cause of his death or to any of the circumstances of the transaction which resulted in his death, are admissible when the person's death comes into question. The essential requirement of such statement to be accepted as evidence would be that the person who makes such statement is under the expectation of death. The special sanctity has been given to such statements as it is believed that a person on the death-bed will not speak lie.

14 The main objection raised in this case is that the Medical Officer, who allegedly examined Jayshree before each of the Dying Declaration was started and at the end of each of the Dying Declaration endorsement has been given, has not been examined and, therefore, these Dying Declarations cannot be considered at all. The answer to this objection is in the Constitution Bench decision in **Laxman** (supra). The certificates have been taken about the fitness. No doubt, Dr. Kaushik is said to be the Medical Officer who has given those endorsements on all the three Dying Declarations

and he has not been examined. But when the absence of certification of the Doctor as to the evidence of mind is a rule of caution and the voluntariness and truthfulness nature of declaration to establish otherwise also, then non examination of Dr. Kaushik cannot be said to be fatal to the prosecution story. Whether evidence of the deceased to give statement has been otherwise brought on record, would be a question. For that purpose we will have to again see the testimony of all the three witnesses, PW 4 PHC Mr. Narayan Jadhav, PW 9 Balkrushna Wanjarkhedkar – Naib Tahsildar-cum-Executive Magistrate and PW 10 API Mr. Shivanand Devkar. All of them have stated that they had confirmed the consciousness and fitness of Jayshree to give statement before recording the statement. It is not a rule of law that those questions or the test applied by them should be reduced into writing somewhere. It is mental satisfaction of the writer. It can be arrived at by asking basic questions. Further, merely because Jayshree had sustained 95% burn injuries, we cannot hold that she would not have been in a fit state to give statement. Therefore, taking into consideration the entire evidence i.e. examination-in-chief as well as the cross-examination of these witnesses, we conclude that all the three Dying Declarations have been proved. Now, whether conviction can be based on these Dying Declarations, would be a question and as aforesaid, in case of multiple Dying Declarations the law has been crystalized in **Jagbir Singh vs. State (NCT of Delhi)** [(2019) 8 SCC 779]

thus -

“31. A survey of the decisions would show that the principles can be culled out as follows :

31.1 Conviction of a person can be made solely on the basis of a dying declaration which inspires confidence of the court;

31.2 If there is nothing suspicious about the declaration, no corroboration may be necessary;

31.3 No doubt, the court must be satisfied that there is no tutoring or prompting;

31.4 The court must also analyse and come to the conclusion that imagination of the deceased was not at play in making the declaration. In this regard, the court must look to the entirety of the language of the dying declaration;

31.5 Considering material before it, both in the form of oral and documentary evidence, the court must be satisfied that the version is compatible with the reality and the truth as can be gleaned from the facts established;

31.6 However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconciliable.

31.7 In such cases, where the inconsistencies go to some matter of

detail or description but is incriminatory in nature as far as the accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

31.8 The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two.

31.9 In the third scenario, what is the duty of the court ? Should the court, without looking into anything else, conclude that in view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon ?”

The ratio in **Jagbir Singh** (supra) is again reiterated in **Rajaram vs. State of Madhya Pradesh [AIR 2023 SC 94]**. Therefore, the inconsistency will have to be considered before relying upon the Dying Declarations. It will

not be out of place to mention here that as regards the role attributed to the appellant is concerned, there is absolutely no inconsistency in the three Dying Declarations. Whatever inconsistency was there, it was in respect of role attributed to accused Nos.2 to 4 and the benefit has been given to them by the learned Trial Judge, thereby acquitting them. Therefore, when there is absolutely no inconsistency in the three Dying Declarations as regards the role attributed to the appellant is concerned and further it is corroborated by direct evidence of PW 3 Pranjali, we do not find that there is any perversity or illegality committed by the learned Trial Judge in convicting the appellant.

15 The learned Trial Judge has also considered the defence taken by the accused. A separate written statement was given, which was formed part of statement under Section 313 of the Code of Criminal Procedure, wherein it was tried to be stated by the present appellant that PW 2 Babasaheb Salve – father of deceased Jayshree had come to his house and picked up quarrel with him and he was assaulted by PW 2 by stick, as a result of which he sustained fracture to the hand. It has been tried to be tagged to the injury certificate Exh.74. As aforesaid, the said Medico Legal Certificate cannot be considered as in the way the accused/appellant wants to rely. First of all, the Medical Officer, who examined the accused, has not been examined and secondly if it was a fracture, then appellant would not have kept himself

away from the medical aid for two days. He has not explained as to why he had not sought the medical help immediately. Therefore, when the learned Trial Judge has also considered the defence of the accused and the legal effects of the Dying Declarations properly, we do not find perversity.

16 The testimony of PW 2 Babasaheb Salve would show that accused had made illegal demand and ill-treated Jayshree and, therefore, Jayshree had come to his house and had lodged report against the accused persons, but thereafter there was settlement and she resumed the cohabitation. This fact is rather corroborated by the Dying Declarations. Thus, it can be seen that even in the past there was dispute between Jayshree and appellant and Jayshree had taken legal recourse by lodging the report, but in view of settlement she had started cohabitation. But then the three Dying Declarations consistently say that she was put to fire by appellant on the ground that his mother is not returning to Majalgaon because of Jayshree.

17 Prosecution has proved the spot panchnama through PW 6 Akshay Salve. Important point to be noted is that there is no question to him that he had not noticed window to the house of accused. PW 5 Dr. Ravikumar Kamble is the Medical Officer who had conducted the autopsy

and had stated that Jayshree had sustained 95% burns. Taking into consideration the direct evidence of PW 3 Pranjali as well as the three Dying Declarations, it can be said that prosecution has proved that death of Jayshree was homicidal in nature and appellant/accused No.1 is the author of the crime.

18 Thus, taking into consideration the legal position as above stated in the various authorities and also the assessment of fact made out by us, we conclude that the Dying Declarations are properly and legally proved and those are giving a clear picture. All the Dying Declarations have arrayed the appellant with specific role attributed to him. It cannot be said that act of pouring of kerosene and igniting the match stick throwing it on the deceased on whom already kerosene was poured; cannot be said to be without intention of committing murder. Definitely, the appellant had knowledge about the consequences of the acts done by him. Therefore, when the Dying Declarations are inspiring confidence, conviction can be based on the Dying Declarations.

19 Thus, on re-assessment of the evidence which is permissible by the Appellate Court, we conclude that the prosecution had proved all the three Dying Declarations beyond reasonable doubt and those were sufficient

to convict the appellant. The act of the appellant was with intention to kill. The learned Trial Judge has rightly held that the prosecution has proved the offence punishable under Section 498-A and 302 of the Indian Penal Code. The said finding does not call for any kind of interference by this Court. There is no merit in the present appeal, and the same deserves to be dismissed. Accordingly, the appeal stands dismissed.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

agd