



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.393 OF 2018

1. Smt. Mangal Sainath Salve
Age: 45 years, Occu.: Household,
R/o. Indiranagar, Shirasgaon,
Tq.Shrirampur, Dist.Ahmednagar.

2. Smt. Shital Nandu Gorde
Age: 28 years, Occu.: Household,
R/o. Indiranagar Shirasgaon,
Tq. Shrirampur, Dist.Ahmednagar.

..Appellants
(Ori. Accused Nos.1 & 2)

Verus

1. The State of Maharashtra
Through : The Police Station Officer,
City Police Station, Shrirampur,
Tq.Shrirampur, Dist.Ahmednagar.
2. Balasaheb Patilba Gorde
Age: 43 years, Occu.: Labour,
R/o. Shirdi, Tq.Newasa,
Dist.Ahmednagar.
3. Mirabai Balasaheb Gorde
Age: 41 years, Occu.: Labour,
Resident as above.

Address of Respondent nos.2 & 3
At present Kankuri Road,
Shriramnagar, Sai Assara Guest house
behind, Near Vitthal Mandir,
Shriramnagar, Shirdi, Tq. Rahata,
Dist.Ahmednagar.

..Respondents

...

Advocate for Appellants : Mr.Joydeep Chatterji
Additional Public Prosecutor for Respondent no.1 :Mr.S.D.Ghayal
Advocate for Respondent nos.2 & 3 : Mr.Dhananjay A.Patil (Appointed)

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 6 DECEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Feeling aggrieved and getting dissatisfied by the judgment and order of conviction passed by learned Additional Sessions Judge, Shrirampur, Dist.Ahmednagar dated 09-05-2018 in Sessions Case No.24 of 2017 convicting appellants for offence under Sections 302 r/w 34, 504 r/w 34, 506 r/w 34 and 120-B of the Indian Penal Code (IPC), exception has been taken by filing instant appeal.

STORY OF PROSECUTION IN BRIEF

2. Deceased Bharati was married to original accused no.3 - Siddhant. Present appellant no.1 – Mangal (mother-in-law), appellant no.2, a widow and sister-in-law, namely Shital, original accused no.3 – Siddhant (husband) and original accused no.4 – Suraj (brother-in-law) and deceased were living together. Out of the wedlock, deceased and accused no.3 - husband had three daughters.

On 02-04-2017, in the morning, mother-in-law i.e. appellant no.1 Mangal started quarreling with deceased for not doing work and even asked her to go to her parent's house if she does not wish to work. Addressing her as a useless lady, she abused her. While deceased was giving fodder to the cattle

in the cattle shed at around 11:00 a.m., appellant no.1 poured kerosene on her person and directed appellant no.2 to ignite her.

After injured was taken to the hospital and admitted, her dying declaration Exh.28 was recorded by PW-4 Chavan (PHC), on the strength of which crime was registered by Shrirampur Police Station for offence under Sections 307, 504, 506 of the IPC. PW12 Bhosle (API) carried out investigation and after gathering sufficient evidence, he chargesheeted accused. Bharati succumbed to burn injury and hence, the offence is converted into Section 302 of the IPC.

On committal of case, learned Additional Sessions Judge, Shrirampur, who was seized with the matter, conducted trial, during which prosecution has adduced evidence of 12 witness. After recording statement under Section 313 of the Code of Criminal Procedure (Cr.PC.), defence adduced evidence of DW1 Ananta. Learned trial Court heard both the sides, appreciated oral and documentary evidence and reached to a conclusion that prosecution failed to prove the case against original accused nos.3 and 4 i.e. husband of deceased and brother-in-law of deceased, but held charges proved as against original accused no.1 - mother-in-law and original accused no.2 - sister-in-law of deceased and convicted them as spelt-out in the operative order of the impugned judgment.

SUBMISSIONS

On behalf of appellants :

3. Learned Counsel for appellants would point out that admittedly case is based on dying declarations. He pointed out that here there are three dying declarations, but none according to him are consistent. He read before us all three dying declarations Exhibits 28, 37 and 52 and would strenuously submit that not only dying declarations are inconsistent but they are each time improvised to merely falsely implicate appellants. He would submit that deceased was reported to have suffered in all 92% of burns and therefore, he doubts very capacity of deceased to give not one but multiple dying declarations that too in detail. He also invited our attention to the communication made by Police i.e. MLC case dated 02-04-2017 Exh.27 and would submit that history of burn was reported to be of blast of stove. That even prosecution own witness PW11 Dr.Karad, a Doctor, where deceased was admitted, in cross-examination has candidly admitted about history given as stove burst. He pointed out that inspite of occurrence taking place at around 11 a.m. on 02-04-2017, dying declaration is not recorded by PW4 Chavan (PHC) immediately, but it is apparently recorded in the evening and therefore, there is delay as well as ample scope for tutoring by relatives, who had shortly reached hospital and were in the company of deceased.

4. He next submitted that in first dying declaration Exh.28 mere initials of deceased is obtained, which is unidentified as well as not attested, whereas in second dying declaration Exh.37, there is neither thumb impression nor any signature. He questioned that what was need of recording third dying declaration Exh.52, which is apparently not only lengthy but in detail and the material appearing therein is not stated by deceased in her alleged first two dying declarations. For all above reasons, he submits that dying declarations are apparently not voluntary but even product of tutoring for false implication.

5. Taking us through the evidence of Scribes to both dying declarations PW4 Chavan (PHC) and PW6 Jadhav (Circle Officer), it is submitted that they have admitted in cross-examination that time of commencement and conclusion is not noted in the dying declaration. Further there are material omissions also. He pointed out that the aunt-in-law and appellant no.1 herself had shifted deceased to hospital, but the aunt-in-law has not been examined for the best reasons known to prosecution.

6. He further pointed out that admittedly deceased had suffered burns over entire body including her palms and fingers and bandages were required to be applied to such parts of which PW6 Jadhav Scribe has candidly admitted in cross-examination and therefore, he would question by submitting that how signature of deceased could at all be obtained on Exhibits 28, 37 and 52. It is

also his submission that though father and mother of deceased are examined as PW7 Balasaheb and PW8 Mirabai and though they claim to have reached hospital and further have claimed about receiving oral dying declaration, he pointed out that they have not promptly reported the same to Police. That they are assigning different reason for annoyance of appellants that is deceased begetting only girl children, which according to learned Counsel, has not been stated by deceased herself.

Even according to learned Counsel, certificate of fitness is not appearing on Exh.28 i.e. on the basis of which crime is registered and on Exh.37 or Exh.52 and therefore, on such count also he questions credibility and veracity of so called dying declarations. It is also his submission that PW11 Dr.Karad has candidly admitted about history.

7. Lastly he submitted that dying declarations are not only delayed but are full of inconsistencies, infirmities and therefore, learned trial Court ought not to have accepted the same and recorded the guilt. However, according to him the same having unfortunately so done, he seeks interference in the findings and impugned judgment by allowing the appeal.

On behalf of State :

8. In answer to above, learned APP would submit that there are multiple dying declarations in which role of both appellants is clearly defined. That

her all dying declarations are consistent in that regard. That on the day of occurrence, dying declaration was recorded and crime was registered. He submitted that investigation was carried out, which revealed complicity of accused and as the dying declarations and evidence were inspiring confidence, learned trial Judge has rightly held both appellants guilty and as there is no merit, he would submit that appeal be dismissed.

PROSECUTION WITNESSES

9. To support its case, prosecution has examined as many as 12 witnesses. Their status and role is as under :

PW1 Somnath Garbhaji Gorde is Pancha to seizure of clothes of accused no.1. Recovery panchanama is at Exh.21. His evidence is at Exh.20.

PW2 Dattatraya Baban Gorde is maternal brother of deceased. His evidence is at Exh.23.

PW3 Bhausahab Balaji Supekar is Pancha to seizure of clothes of deceased. His evidence is at Exh.24.

PW4 Sahebrao Shivram Chavan is Police Head Constable who recorded first dying declaration Exh.28 of deceased. His evidence is at Exh.26.

PW5 Bajirao Satu Waghadkar is grandfather of deceased. His evidence is at Exh.32.

PW6 Bhalchandra Dattatray Jadhav is Circle Officer who recorded second dying declaration Exh.37. His evidence is at Exh.25.

PW7 Balasaheb Patilba Gorde is father of deceased. His evidence is at Exh.38.

PW8 Mirabai Balasaheb Gorde is mother of deceased. His evidence is at Exh.39.

PW9 Vedprakash Bhagwat Upadhye is Medical Officer at Pravara Rural Hospital, Loni. His evidence is at Exh.41.

PW10 Aakash Dinesh Joshi is Residential Doctor at Pravara Rural Hospital, Loni, who issued MLC to Police Station. His evidence is at Exh.43.

PW11 Dr.Amit Dhondiram Karad is Medical Officer at Pravara Medical Hospital, Loni. His evidence is at Exh.45.

PW12 Mohan Bajirao Bhosle (API) is Investigating Officer. He recorded dying declaration Exh.52. His evidence is at Exh.48.

DEFENCE WITNESS

Defence has examined one witness. **DW1** Ananta Subhash Ghode. His evidence is at Exh.60.

10. Here case prosecution is entirely based on dying declarations. Out of four original accused, only accused nos.1 and 2 i.e. mother-in-law and sister-in-law of deceased are held guilty by the learned trial Court.

LAW ON DYING DECLARATION

11. Case being based on dying declarations, we wish to give brief account of law on manner of appreciation of evidence in the form of dying declaration as

well as settled principles which are culled out by the Hon'ble Apex Court from the various landmark cases like *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, *Paniben v. State of Gujarat*; (1992) 2 SCC 774, *Laxman v. State of Maharashtra*; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra*; 2011 ALL MR Cri. 2249. *Surendrakumar v. State of Punjab*; (2012) 12 SCC 120, *Jagbir Singh v. State (NCT of Delhi)*; (2019) 8 SCC 779, *Madan v. State of Maharashtra*; (2019) 13 SCC 464.

Off late in the case of *State of Uttar Pradesh v. Veerapal and another*; (2022) 4 SCC 741 while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, the Hon'ble Apex Court has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as under:

- “1. *It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*
2. *Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;*
3. *It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*
4. *A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;*

5. *A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and*
6. *In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”*

Similarly, in the case of ***Uttam v. State of Maharashtra; (2022) 8 SCC 576***, again certain principles are enunciated which are to be borne in mind in a case wherein the evidence is in the form of dying declaration. These principles are as under :

“(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 Supreme 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.

(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.”

Very recently certain principles of law with regard to case involving multiple dying declarations are spelt out in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** [Criminal Appeal No.1473 of 2011, decided on 18-10-2023]. These principles read thus :

- “9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*
- 9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;*
- 9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purpose of corroboration of the contents of dying declarations.*
- 9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*
- 9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*
- 9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*
- 9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes*

importance along with other factors such as the possibility of tutoring by relatives, etc.”

The ratio that is settled is that dying declaration must be firstly voluntary, truthful and secondly it should not be tutored and further the same should inspire the confidence of the Court. These are the basic principles which are to be borne in mind while appreciating dying declarations.

12. As all dying declarations are in vernacular, for proper analysis and comprehension, we got all dying declarations translated and the versions in English are as under :

FIRST DYING DECLARATION

“Exhibit 28

STATEMENT

I, Bharati Siddhant Salve, aged 26 years, Occ. Labourer, R/o Shrirampur, Indira Nagar, Tq. Shrirampur, Dist. Ahmednagar do hereby state in person in the Burn Ward No. 8 of the Pravara Medical Trust Hospital, being admitted, state that, I reside on the above address with my husband Siddhant Salve, mother-in-law Mangal Salve, brother-in-law Suraj Salve and my three daughters Sanskruti, Samruddhi and Swastika and my husband works as a Journalist. We earn livelihood by raring cattle. My brother-in-law works at Kolhad after completing the course in Engineering. My parental home is at Kankuri Road, Shirdi. My marriage took place ten years ago with Siddhant Salve and I have begotten three daughters from him.

On 2-4-2017, I woke up at 6.00 AM as usual and did the household chores. By 10.00 my husband and brother-in-law had left the house to attend

the function of Kanduri at Ahmednagar at our relatives. My sister-in-law Sheetal Nandu Gorde had been married for some 15 years with one Nandu Gorde. They have a son and a daughter. Before and after the death of her husband, my sister-in-law Sheetal resides with us. My sister-in-law works as a Conductor in Shrirampur Depot from four years. As today is holiday, she stayed at our house at Indira Nagar. On 2-4-2017, I was washing the utensils in the house, my mother-in-law Mangal Salve said to me, "You never work. If you do not wish to do any work, you should go to your parental home. You are good for nothing." By saying this, she abused me and said that, "you have been tolerated by us and anyone else in your place would not have been tolerated..you should die...you spoiled relations with all our relatives." When she was talking loudly, I went into the shed to bring the sugarcane from the lane to feed the cows tied in the cattle shed and while I was drawing sugarcane at about 11.00 AM, my mother-in-law came from behind and said that if you are not going to die, then I will kill you by pouring kerosene and she brought the drum kept near the stack of sugarcane in the shed of white colour and having three liters of kerosene and when I was bringing the sugarcane, my mother-in-law Mangal and sister-in-law Sheetal abused me and blocked me in the lane and then my mother-in-law Mangal opened the cap of the three-liter kerosene drum held in her hand and poured it on me and my sister-in-law said by mentioning my name that, she should be killed and as she has gone mad, kerosene is poured on her and you ablaze her with a burning match-stick. Then my sister-in-law Sheetal Nandu Gorde set me ablaze with a burning stick. The cloths on my person caught fire and I dropped the sugar cane down and started shouting, "Save me!Save me!!". At that time, my mother-in-law and aunt of my husband, Sunita Anil Gorde and her two sons, Ajinkya and Shumbham thrown soil on my person to douse the fire and then my mother-in-law started the pump on, in front of our house, and attempted to douse the fire off with hose. By dousing the fire off my body, my mother-in-law and sister-in-law changed the cloths on my person and I was taken to Kamgar Hospital, Shrirampur by my mother-in-law, Mangal, sister-in-law Sheetal, my distant mother-in-law and

aunt of my husband- Sunita and friend of my husband- name unknown- into a private rickshaw. The doctors at Kamgar Hospital recommended for PMT Hospital, Loni and we have come here and I am being admitted in burns ward. Then during my treatment and when I was fully conscious, I have made the statement and admittedly true and correct.

Before,
Signed/-
S S Chavan,PHC 556/
Loni Police Station
Dist. Ahmad Nagar.

Signed/-
B S S [In English]

Patient start statement at 5.45 PM
to 6.00 PM and end at
Signed/-
Dr. VED PRAKASH, Surgery Resident 2-4-2017

Shrirampur Town Police Station
Crime Regn. No. I 82/2017 U/s 307, 504, 506 of IPC
Registered at 22-24 hrs on 2-4-2017 Signed/-
SHO, Shrirampur.”

SECOND DYING DECLARATION

“EXHIBIT 37

GENERAL QUESTIONNAIRE FOR DYING-DECLARATION

1. Name and address of the Executive Magistrate:
B D JADHAV, Circle Officer, Loni, Tq. Loni, Dist. Rahata
2. Name and Complete Address of the Patient:
BHARATI SIDDHARTH SALAVE, AGED 26 YEARS,
R/o Indira Nagar, Shrirampur, Tq. Shrirampur.

QUESTIONNAIRE

1. State your full name : Bharati Siddharth Salve,
2. Address : R/o Indira Nagar, Shrirampur, Tq.
Shrirampur.
3. What do you do? : Cattle- rarer
4. What is your mother-tongue? : Marathi
5. Are understanding the questions put to you properly? : Yes.
6. Why you have been brought here? : For treatment of burn-injuries
7. What is the cause of injuries sustained by you? : Mother-in-law poured the kerosene and Sister-in-law Shital Nandu Korde set me ablaze.
8. How the incident took place? :
9. Who were the present at the spot of occurrence?
: Mother-in-law, Sister-in-law and I.
10. What is the reason behind incident?
: Due to quarrel with my mother-in-law.
11. DETAILS
- A. When did your marriage took place? : 10 years ago.
- B. Do you have children? : 3 daughters
- C. How was your married life initially? : I was ill-treated for four to five years, quarrels were there always.
12. How was your relations with your in-laws?
My mother-in-law and sister-in-law always harassed and quarreled with me.
13. How they used to harass you? : Complaining that I do not work [in the house.]
14. Have you informed anyone about the harassment? No.
15. Whether efforts were taken to save you? : Sunita Anil Borde- My mother-in-law cum aunt of husband- attempted to save me.

16. Who has taken you to hospital ? My mother-in-law and mother-in-law cum aunt of husband
17. How much time was taken to take you away from the spot of incident after the incident? 45 min.
18. ----
19. Whether you have complaint against anyone?
If yes, provide the details. My mother-in-law Mangal Sainath Salve and sister-in-law Sheetal Nandu Gorde have been harassing me always and threaten me of life.
20. Statement concluded on: 2-4-2017 at 8.53 PM.

BEFORE

Signed/-

Circle Officer, Loni

2-4-2017 at 8. 53 hrs

2-4-2017

8: 46 PM

Patience was conscious

Oriented to give statement.

Signed/-"

THIRD DYING DECLARATION

"Exhibit 52

STATEMENT

3-4-2017

I, Bharati Siddhant Salve, aged 26 years, Occ. Labourer, R/o Shrirampur, Indira Nagar, Tq. Shrirampur, Dist. Ahmednagar do hereby state in person in the Burn Ward No. 8 of the Pravara Medical Trust Hospital, being admitted, state that, I reside on the above address with my husband Siddhant Salve, mother-in-law Mangal Salve, brother-in-law Suraj Salve and my three daughters Sanskruti, Samruddhi and Swastika and my husband works as a Journalist. We earn livelihood by rearing cattle. My brother-in-law works at Kolhad after completing the course in Engineering. My parental home is at

Kankuri Road, Shirdi. My marriage took place ten years ago with Siddhant Salve and I have begotten three daughters from him.

On 2-4-2017, I woke up at 6.00 AM as usual and did the household chores. By 10.00 my husband and brother-in-law had left the house to attend the function of Kanduri at Ahmednagar at our relatives. My sister-in-law Sheetal Nandu Gorde had been married for some 15 years with one Nandu Gorde. They have a son and a daughter. Before and after the death of her husband, my sister-in-law Sheetal resides with us. My sister-in-law works as a Conductor in Shrirampur Depot from four years. As today is holiday, she stayed at our house at Indira Nagar. On 2-4-2017 I was washing the utensils in the house, my mother-in-law Mangal Salve said to me, "You never work. If you do not wish to do any work, you should go to your parental home. You are good for nothing." By saying this, she abused me and said that, "you have been tolerated by us and anyone else in your place would not have been tolerated..you should die...you spoiled relations with all our relatives." When she was talking loudly, I went into the shed to bring the sugarcane from the lane to feed the cows tied in the cattle shed and while I was drawing sugarcane at about 11.00 AM, my mother-in-law came from behind and said that if you are not going to die, then I will kill you by pouring kerosene and she brought the drum of white colour kept near the stack of sugarcane shed and having three liters of kerosene and when I was bringing the sugarcane, my mother-in-law Mangal and sister-in-law Sheetal abused me and blocked me in the lane and then my mother-in-law Mangal opened the cap of the three-liter kerosene drum held in her hand and poured it on me and my sister-in-law said by mentioning my name that, "she should be killed and as she has gone mad". Kerosene is poured on her and you ablaze her with a burning match-stick. Then my sister-in-law Sheetal Nandu Gorde set me ablaze with a burning stick. The cloths on my person caught fire and I dropped the sugar cane down and started shouting, "Save me!Save me!!". At that time, my mother-in-law and aunt of my husband, Sunita Anil Gorde and her two sons, Ajinkya and Shumbham thrown soil on my person to douse the fire and got injured due to burning.

In this regard, I state that, on the directions of my husband Siddharth Sainath Salve and my brother-in-law Suraj Sainath Salve, Mangal, my mother-in-law and Sheetal Nandu Gorde, my sister-in-law have set me ablaze by pouring kerosene on me and igniting with a match-stick and as I have burn-injured, my relatives have admitted me in Pravara Hospital, Loni for treatment.

On 2-4-2017, I have made the statement in full consciousness in presence of the doctor and the statements given to Police and the Taluka Magistrate are also true. I am conscious and being treated medically. I am not under pressure of anyone and the statement is recorded and admittedly true and correct.

Before,
Mohan B. Bhosale,
Police Sub-Inspector,
Shrirampur Town Police Station.”

Signed/-
B S S [in English]

(As translated by Sr. Translator, High Court, Aurangabad)

ANALYSIS

13. There is no dispute that deceased Bharati suffered burns on 02-04-2017 at around 11:00 a.m. in the cattle shed. First dying declaration Exh.28, which is recorded by **PW4** Chavan, Police Head Constable of Loni Police Station, seems to be recorded at around 05:45 p.m. to 06:00 p.m. while deceased was admitted in Pravara Rural Hospital, Loni. Communication to Police Station Exh.27 shows that deceased was infact brought to the Pravara Rural Hospital, Loni at 12:40 Noon itself. Consequently, dying declaration is apparently recorded after 5-6 hours by PW4 Chavan, who by virtue of his posting at Police Chowki was in the very premises of Hospital. But either he is not promptly reported or he himself has not shown the sense of urgency by immediately

going and recording dying declaration. Surprisingly certification of fitness is not also obtained on dying declaration as the remark over dying declaration is mere “patient start statement at 5:45 p.m. to 6 p.m and end at ____”. Even time of conclusion of dying declaration is not noted and therefore, said Exh.28 is apparently shrouded with suspicion. In our considered opinion, deceased having suffered 92% burns including face being affected, fitness certificate was essential.

14. On examining **first dying declaration Exh.28**, it is noticed that there were alleged abuses by mother-in-law at around 10:00 am and deceased stated that when she was in cattle shed, initially her mother-in-law had carried kerosene drum and had kept it in cattle shed. However, surprisingly she continued to stay there and did not raise alarm till the act of pouring kerosene allegedly happened at around 11:00 a.m. In this dying declaration she speaks of appellant no.1 - mother-in-law pouring kerosene and directing appellant no.2 - sister-in-law to ignite her, but subsequently, attributed role of extinguishing fire and even shifting to Hospital after clothes being changed to appellant no.1 herself.

15. On meticulously going through second **dying declaration Exh.37**, which is apparently cryptic and in question-answer form, while answering question no.7, deceased has answered that mother-in-law poured kerosene and sister-

in-law ignited her. It is further apparent that it is firstly undated, secondly, time of commencement and its conclusion is not noted and thirdly, it has no clear thumb impression and identification / attestation at all. Even Doctor's signature is apparently missing from the same. Alleged certificate seems to be obtained after recording statement had already commenced as time of issuance of certificate is 08:46 p.m. but statement is shown to be concluded at 08:53 p.m. These are major infractions rendering dying declaration Exh.37 unworthy of reliance.

PW6 Jadhav, scribe admitted that he did not receive written communication, he did not note date and time over dying declaration Exh.37 and further admitted approaching Doctor, who was in his chamber and further admitted regarding not obtaining thumb impression. He also admitted that bandage was applied to hands and body of deceased. Such answer strengthens the submission of learned Counsel for appellants that under such circumstance, how deceased was at all in a position to cause signature by way of initials.

16. There is yet another **third dying declaration Exh.52**, which prosecution claims to be a supplementary statement, but is apparently scribed on 03-04-2017 i.e. on the next date and as pointed out, is having detailed narration inspite of 92% burns. Further what prompted recording third dying declaration is not clear. As like previous one, even on this so called

supplementary statement, there is no certification of fitness from Doctor. That apart there is no identification or attestation below so called signature of deceased.

SUMMATION

17. To sum up, here there are several infirmities and infractions in the multiple dying declarations like no certification of fitness to give declaration, delay in recording dying declarations, failure to mark attestation and identification below signature. Aunt-in-law, who allegedly shifted deceased to hospital is not examined. MLC at Exh.27 shows history being reported regarding burns due to burst of stove. Distinct motives and reasons for annoyance are attributed by deceased and her parents. For above reasons, multiple dying declarations are failing to inspire confidence.

18. We have gone through the impugned judgment. In our opinion, there is no proper appreciation of evidence, more particularly, dying declarations, its evidentiary value and even learned trial Court has not applied the settled legal position while appreciating multiple dying declarations. There are several suspicious circumstances, which are not taken into account while appreciating the evidence. Therefore, appellants succeed. Accordingly, we proceed to pass following order :

ORDER

- I. The appeal stands allowed.
- II. The conviction awarded to the appellants-accused nos.1 - Mangal Sainath Salve and 2 - Shital Nandu Gorde in Sessions Case No.24 of 2017 on 09-05-2018 by learned Additional Sessions Judge, Shrirampur, District Ahmednagar for the offence punishable under Sections 302 r/w 34, 504 r/w 34, 506 r/w 34 and 120-B of the Indian Penal Code stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 302 r/w 34, 504 r/w 34, 506 r/w 34 and 120-B of the Indian Penal Code.
- IV. The order in respect of granting compensation to respondent nos. 2 and 3 also stands quashed and set aside.
- V. The appellants be set at liberty, if not required in any other case.
- VI. We clarify that there is no change as regards the order of disposal of *muddemal*.
- VII. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VIII. Fees of the Advocate appointed for respondent nos. 2 and 3 is quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]**[SMT. VIBHA KANKANWADI, J.]**