



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO.453 OF 2017
WITH
CRIMINAL APPLICATION NO.1900/2022
IN APPEAL/453/2017
WITH
CRIMINAL APPLICATION NO.2594/2023
IN APPEAL/453/2017**

1. Shaikh Amjad S/o Shaikh Jalal
Age: 37 years, Occ.: Labour,
R/o. Ambedkar Nagar, Basmath.
 2. Shaikh Naseem W/o Amjad
Age: 32 years, Occ.: Labour,
R/o. Ambedkar Nagar, Basmath.
 3. Shaikh Riyaz S/o Shaikh Pashumiya
Age: 30 years, Occ.: Labour,
R/o. Madina Nagar, Basmath.
 4. Shaikh Usman S/o Shaikh Daud
Age: 50 years, Occ.: Labour,
R/o. Yelki, Tq.Kalamnuri.
 5. Shaikh Asina @ Haseena W/o Shaikh
Pashumiya
Age: 76 years, Occ.: Labour,
R/o.Asola, Tq.Kalamnuri.
- ..Appellants
(Orig. Accused Nos.1 to 5)

Versus

- . The State of Maharashtra
Through Police Station
Basmath (City), District Hingoli. ..Respondent

...
Advocate for Appellants : Mr.Nilesh S. Ghanekar
APP for Respondent : Mr.S.D.Ghayal

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

DATE : 3 OCTOBER, 2023

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

1. Appellants – convicts are hereby invoking Section 374 of the Code of Criminal Procedure (Cr.P.C.) for assailing judgment and order of conviction passed by the learned Additional Sessions Judge, Basmath in Sessions Trial Case no.16 of 2015 by which they are held guilty for the offence under Section 302 read with 34 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life.

CASE OF PROSECUTION IN BRIEF

2. Prosecution was launched against appellants on the basis of dying declaration (Exh.28) given by deceased Ajmeri. While undergoing treatment in burns ward in Civil Hospital, she gave statement that appellants herein poured kerosene and set her on fire. It is stated in the dying declaration that on 06-04-2015, her mother-in-law came to house of her sister-in-law at Basmath. On that day, her husband went to house of her sister-in-law and therefore, she went there to call her mother-in-law and her husband for taking dinner. At that time, her mother-in-law abused and beat her. It is alleged that Asina, mother-in-law (appellant No.5) caught hold of her hair and Ajmad Shaikh, her brother-in-law (appellant No.1) slapped her. At that time, her sister-in-law Naseem Ajmad Shaikh (appellant

No.2) brought one liter bottle of Kerosene from house and poured on her person and the other brother-in-law, Usman Daud (appellant No.4) brought a match box and ignited her. On the basis of her such statement, crime was registered initially for the offence under Sections 307, 323, 504 read with 34 of the IPC. As she succumbed to the burns, crime was converted into Section 302 of IPC and accordingly, accused were chargesheeted, tried and held guilty by the learned trial Judge.

Said conviction is now taken exception to in appeal by the appellants on the basis of grounds mentioned in the appeal memo.

SUBMISSIONS

On Behalf of Appellants :

3. Taking exception to the judgment and criticizing the evidence, learned Counsel for the appellants would submit that there is total non-application of mind and failure to appreciate evidence and to consider and apply settled legal position. He pointed out that firstly dying declarations are not recorded promptly and secondly dying declarations were recorded when relatives were around the patient and therefore, the said dying declarations are unworthy of credence. He pointed out that even dying declarations were narrated in Hindi

language but the same are noted in Marathi language, which is in translated form and therefore, it is his submission that veracity of the dying declarations also comes under shadow of doubt. He pointed out that alleged occurrence has taken place on 06-04-2015, whereas dying declarations are recorded on the next day i.e. almost after more than 12 to 14 hours. Taking us through the spot panchanama and evidence of prosecution, he would question as to whether the said spot, which is shown to be house of deceased, could at all be really the spot of incident as according to him, prosecution evidence suggests that deceased had been to house of accused which is away from her own house. He invited our attention to medical papers which show that occurrence has taken place in the house of deceased. Therefore, there is confusion as to whether alleged incident took place. For said reason, even spot panchanama also comes under shadow of doubt. He took us through the evidence of prosecution and would submit that witnesses are not consistent.

Accordingly to learned Counsel evidence is manufactured to falsely implicate the appellants. For all above reasons, he submits that with such quality of evidence, prosecution has miserably failed to bring home charges. However, learned trial Judge has misconstrued available evidence and has not considered and

appreciated said in correct perspective and has erred by accepting case of prosecution as proved. For all above reasons, he prays that evidence needs to be re-appreciated and appeal deserves to be allowed.

On Behalf of State :

4. In support of judgment of the trial Judge, learned APP pointed out that there is no perversity, illegality in the findings. According to learned APP, in the dying declarations, deceased had named appellants for beating, abusing and setting her on fire. Circumstances and scene of occurrence show involvement of appellants. That evidence of prosecution remained unshaken on material count of occurrence. Holding dying declarations voluntary and truthful, learned trial Judge has correctly appreciated evidence as well as legal position. So he submits that there is no merit in the appeal and therefore, appeal be dismissed.

5. In the light of above submissions and we being exercising appellate powers under Section 374 of the Cr.P.C., we re-appreciate, re-analyze and re-examine entire evidence adduced by the prosecution in the trial Court.

On doing so, we have noticed that in the trial Court, in support of its case, prosecution has adduced evidence of as many as sixteen witnesses. We propose to narrate their status and role, which is as under :

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Shaikh Hamid Sk. Haider is Special Executive Magistrate, who claims to have received communication from Police and in its backdrop he went to Civil Hospital, Nanded and recorded first dying declaration Exh.19.

PW2 Dr.Sunil Baliram Madewad is the Autopsy Doctor, who after conducting post mortem opined that death was due to “septicemia due to burns”. He identified post mortem report Exh.24. His evidence is at Exh.23.

PW3 Dr.Gurnamsingh Bhupendrasingh Girniwale is the Doctor who examined and gave endorsement on being approached by Police Officer on 07-04-2015. His evidence is at Exh.27.

PW4 Syed Imran Sd.Ashraf is Police Constable who carried Muddemal to Forensic Laboratory. His evidence is at Exh.33.

PW5 Sanjay Santukarao Pande is Police Naik, who received papers in Crime No.31 of 2015 alongwith MLC letter, inquest panchanama,

police report and post mortem report. His evidence is at Exh.35.

PW6 Shaikh Gulam Dastgir Shaikh Mehboob Patel is Police Sub-Inspector, who registered crime and FIR. His evidence is at Exh.40.

PW7 Shaikh Raeesabeg Sk.Musa is mother of deceased. His evidence is at Exh.41.

PW8 Shaikh Aref Sk.Afsarmiya is acquaintance of PW7 Shaikh Raeesabeg Sk.Musa. His evidence is at Exh.43.

PW9 Habibabi Ajikh Khan Pathan, is neighbour. Her evidence is at Exh.45.

PW10 Latifkhan Hamidkhan Pathan is Pancha to spot panchanama. His evidence is at Exh.49.

PW11 Shaikh Khayyum Sk.Ismail is Pancha to seizure of clothes of accused Sk.Naseem. His evidence is at Exh.53.

PW12 Radhabai w/o Pandu Dake is neighbour. **PW13** Samina w/o Nayum Shaikh is neighbour.

PW14 Neha Shaikh Riyaz is daughter of deceased and a child witness. Her evidence is at Exh.60.

PW15 Vaijanath Kishanrao Mundhe (API) is Police Officer, who recorded dying declaration Exh.28.

PW16 Hanumant Nagoba Rejitwad is Police Officer. His evidence is at Exh.80.

6. Here admittedly there is no independent eye witness and entire case of prosecution is based on dying declarations. This being the position, we would like to state the settled legal position regarding evidentiary value of dying declaration.

Since the judgment of *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, on numerous occasions law on this aspect has been propounded and certain principles have been culled out from plethora of judgments by the Hon'ble Supreme Court. Very recently the Hon'ble Supreme Court in the case of *State of Uttar Pradesh v. Veerpal and Another*, (2022) 4 SCC 741, while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as follows :

- “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.”

Other celebrated and water-shedding judgments on above aspects are *Laxman v. State of Maharashtra; (2002) 6 SCC 710*,

Jagbir Singh v. State (NCT of Delhi); (2019) 8 SCC 779, Paniben v. State of Gujarat; (1992) 2 SCC 774, Surendrakumar v. State of Punjab; (2012) 12 SCC 120, Madan v. State of Maharashtra; (2019) 13 SCC 464, Ganpat Bakaramji Lad v. State of Maharashtra; 2011 ALL MR Cri. 2249.

7. Here there are two dying declarations; first one is at Exh.28 recorded by **PW15** Vaijanath Mundhe and second is at Exh.19, which is recorded by **PW1** Shaikh Hamid Sk. Haider.

FIRST DYING DECLARATION

8. Going by chronology, first we would like to reproduce the translated dying declaration at Exh.28:

“I, Ajmeri w/o Riyaz Shaikh, age-25 yrs., Occupation- Household & Labourer, R/o Madina Nagar, Vasmat (earlier R/o Asola Tq. Kalamnuri) Dist- Hingoli.

I, do hereby state in person that, since last eight months I am residing along with my husband Riyaz s/o Pashu Shaikh at Madina Nagar, near Kalkai Road, Kautha Road, Basmath.

On 06/04/2015 at 06.45 hrs. in the evening while I was cooking at home, that time my mother-in-law Mrs. Asina Pashumiyan Shaikh who had came from Asola to the house of my sister-in-law Naseem Amjat Shaikh at Basmath. My husband, Riyaz Shaikh had been to the house of my sister-in-law Naseem. Thereafter, I had been to the house of my sister-in-law in order to call my mother-in-law Asina and my husband Riyaz for taking dinner. At that time, my mother-in-law said to me, ‘You slut, why you have came here, I do not want to take dinner. Why you

have come to the house my daughter?’ Having said this she started beating me and said that, ‘You slut, we will finish you.’ By saying so, my mother-in-law Asina caught hold my hair and brother-in-law (husband of sister-in-law) Ajmat Shaikh gave slaps on my cheek. At that time my sister-in-law Naseem Ajmat Shaikh brought one liter bottle of Kerosene kept in the house and poured on my person and the other brother-in-law (husband of sister-in-law) Usman Daud Shaikh brought the match box kept in the house and ignited the match stick and set me ablaze. Due to that I received 60% burn injuries. At that time I shouted loudly, therefore the two-three women in the neighbour poured water on my person with the water pot and extinguished me. At that time my younger daughter Neha shouted and called people to save me. At that time my husband stood near me but he did not help me and even never tried to extinguish the fire. I was saying to my husband to save me but he just stood there and watching. He did not beat me but he did not even save me when they poured kerosene on my person and burnt me. He instigated my sister-in-law Nasim, my mother-in-law Asina, brother-in-law (husband of sister-in-law) Ajmat Shaikh, and the other brother-in-law (husband of sister-in-law) Usman Shaikh to kill me. At that time one Aref Afsarmiyan Shaikh, R/o Javla (Panchal) came to my house to give me talisman. He has witnessed all the incidents. When the quarrel started I called my mother Raeesabegum over the phone. Thereafter, my mother came to Basmath by a vehicle. At that time I was completely burnt.

Therefore, on 06/04/2015 in between 06.45 to 07.15 hrs., my mother-in-law Asina, my sister-in-law Naseem, brother-in-law (husband of sister-in-law) Ajmat Shaikh, and the other brother-in-law (husband of sister-in-law) Usman Shaikh assaulted me with slaps and fist blows, then poured kerosene on my person, ignited match sticks and attempted to kill me by setting me ablaze. At that time my husband- Riyaz just stood near me and aided them. Therefore, my statement is read over to me and it is recorded as per my narration.

Hence stated.

The statement is commenced on 12.25 hrs. and completed on 13.15 hrs. My mother admitted me at Civil Hospital, Nanded after taking initial treatment at Civil Hospital, Basmath.

Hence this statement

[Right hand thumb impression]

Mrs. Ajmeri w/o Riyaz Shaikh

R/o Madina Nagar, Basmath

Before

Signed/-

Vaijanath K. Munde

Police Sub-Inspector,

Basmath Police Station (City)

[I got married before 8 years ago with Riyaz Pashumiyan Shaikh, R/o Asola, Tq. Kalamnuri. I have two daughters 1) Neha, age- 3 yrs., 2) Saniya, age- 1 yrs.]

[Right hand thumb impression]

Mrs. Ajmeri w/o Riyaz Shaikh

On 7/04/15

time 17.30 S.D Entry 43 part 1 to 5

a Crime No 31/015 U/s 307, 323,504

34 of I.P.C has been registered and as

per the direction of API, the investigation

is handed over to Shri. Munde”

[Translation as provided by Sr. Translator, High Court Bench at Aurangabad]

9. **PW15** Vaijanath (API), who has noted the dying declaration is examined at Exh.61. This witness claims that on 07-04-2015 on directions of Police Inspector of Basmat (City) Police Station, he

visited Civil Hospital, Nanded at around 12:00 noon, approached the Doctor in burns ward and he recorded dying declaration of deceased Ajmeri. He identified dying declaration at Exh.28. He stated that thereafter, he handed over the statement of deceased to Police Station Officer, who on the basis of the same registered crime. He claims that he himself commenced investigation of the crime bearing No.31 of 2015.

While under **cross-examination**, he has admitted that there is no Police Chowki in Civil Hospital, Nanded. That if patient is admitted in Civil Hospital then MLC used to send to the said Police Chowki. He admitted that immediately after the incident, injured was initially taken to Sub District Hospital at Basmath and given primary treatment and thereafter referred to Civil Hospital, Nanded. He is unable to state whether MLC was directly received from Sub District Hospital, Basmath. He admitted that in Sub District Hospital statement of patient was not recorded and he is unable to state whether MLC was received by Basmath City Police Station or whether the same was given to Police Chowk of Civil Hospital, Nanded. He admitted that he has not taken entry in the station diary when he proceeded to record dying declaration of deceased Ajmeri. He stated the places where deceased had suffered burns and admitted that

there was bandage on the same. He answered that he made enquiry as to whether she is able to understand Marathi or not. He denied that she was not able to understand Marathi. He further answered that he has not seen MLC received at Basmath (City) Police Station but he admitted that Basmath (City) Police Station has received papers from Police Chowki of Police Station, Vajirabad on 11-04-2015 and same are at Exh.36. He admitted that he received the papers on 16-04-2015.

SECOND DYING DECLARATION

10. Second dying declaration, which is noted by **PW1** Shaikh Hamid Sk. Haider, Special Executive Magistrate is at Exh.19, which is in question answer form. The translated form of statement in question answer form is as under :

“ Q. - What is your full name? Tell your surname.

Ans. - My name is Ajmeri Begam Riyaz Shaikh, surname is Shaikh.

Q. - Are you married? For how many years?

Ans. - Yes, I am married. It is more than 10 years.

Q. - How many children do you have ?

Ans. - I have two daughters only. One is of 3 years age and other is of 1 year age.

Q. - Are you literate ?

Ans. - Yes, I am literate. I have studied till 3rd Std. in Marathi medium and I have also studied Arabi Quran.

Q. - What is your husband's occupation ? Is he also literate?

Ans. - My husband is a timber merchant. He has studied till 6th Std.

Q. - When and where did the incident take place ?

Ans. - The incident took place on 06/04/2015 i.e. Monday at my sister-in-law's place at about 7.00 pm.

Q. - Who were present at the spot at the time of incident ?

Ans. - My sister-in-law namely Naseem, her husband namely Amzad, my mother-in-law's brother-in-law Osman, my mother-in-law namely Haseena were present at the spot and the incident took place in their presence.

Q. - How did the incident took place? Describe in detail.

Ans. - My sister-in-law was teaching my husband. I went to my sister-in-law's home and asked my husband to come home to have food. I asked her, why did she teach my husband? Upon which she replied that, she didn't teach. As I asked her to swear on her children and tell, she became angry and started abusing me and beat me by holding my hair. Osman and my mother-in-law accompanied her. Naseem poured kerosene on my person from 1 litre plastic bottle and ablazed me on fire with a matchstick and I started burning. I was wearing a red saree and a white polyester blouse at that time and as I ablazed it stuck to my body and I burned. I do here swear on god and on my two children that, Naseem, my mother-in-law and Osman these three persons together burned me and attempted to murder me. These three persons are completely responsible for this incident. My husband ran away from the spot when this incident took place. He did not accompanied in this crime. He had left the place at the time of quarrelling. He is not guilty

in this matter.

Q. - What is the purpose behind this deliberate act to burn (you) ? Give the strong reason.

Ans. - Prior to one day of the incident a quarrel took place over a cause of rice. They kept grudge in mind of the same. My sister-in-law was intending to kill me. Every time, she was complaining to my husband about my weaknesses and was vilifying me. My this statement has been read over to me and I gave my right thumb impression after reading the statement. Recording in writing of my this statement has been started at 07.10 p.m. and ended at 07.40 p.m.

*Signature/ thumb impression of the patient
Right thumb impression (Ajmeribi Riyaz Shaikh)”*

[Translation as provided by Sr. Translator, High Court Bench at Aurangabad]

11. **PW1** Shaikh Hamid Sk.Haider, Special Executive Magistrate, who has recorded this second dying declaration, in his evidence at Exh.17, stated that on 07-04-2015 he was present in his Office where he was working as Assistant Account Officer. He identified the communication received requesting to record statement of Ajmeribegum, who was admitted in Civil Hospital, Nanded on account of burns. He identified said letter at Exh.18. He in examination-in-chief itself stated that he received said letter at 09:30 a.m. on 07-04-2015. However, according to him, after attending the office work, he visited Civil Hospital, Nanded at 07:00 p.m. for the purpose of recording dying declaration and after getting

endorsement of Doctor, he noted the dying declaration Exh.19 in question answer form. According to him, deceased informed that her husband had been to house of his sister for the purpose of meal and therefore, she went there. She questioned her sister-in-law for teaching her husband which her sister-in-law denied, upon which she claims that she asked her to swear upon oath of her daughter that she does not teach her brother. Thereafter, it is informed that her sister-in-law got enraged, caught-hold of her hairs, abused and beat her. At that time, mother-in-law and brother-in-law Usman supported her sister-in-law. That there was one liter kerosene in plastic bottle and Naseem poured it on her person and set her on fire with match stick. She informed that Naseem, her mother-in-law gave threat to kill and all three persons are responsible. Her husband ran away. To the last question as to reason behind the incident, witness stated that she informed that one day prior to the incident, there was quarrel over the rice. Therefore, they were enraged over her. It is informed that her sister-in-law used to teach her husband and defame her. Witness has identified said statement at Exh.19.

Above witness in **cross-examination** admitted that deceased had suffered burn injuries on face, neck, both hands and bandage was applied over the same. In paragraph 14 witness answered and

admitted that Ajmeribegum was knowing Hindi language. He candidly admitted that she was not knowing Marathi fluently. He stated that he asked questions to her in Marathi language and she gave reply in Hindi language and thereafter, he translated the same in Marathi and then wrote it. He admitted that there is no endorsement in dying declaration that Ajmeribegum replied in Hindi language and he translated in Marathi. He admitted that after recording dying declaration till it was handed over, it remained in his official bag but he is unable to state whether after 07-04-2015 till 09-04-2015 there were holidays.

ANALYSIS

12. On careful scrutiny of above evidence, here it is emerging that deceased resided at Madina Nagar, Basmath, Dist.Hingoli. It is also emerging that alleged incident had taken place on 06-04-2015 at around 18:00 hours. MLC at Exh.36 shows that alleged occurrence had taken place in the residential house. PW15 Vajjanath Mundhe(API), Investigating Officer, who has also recorded dying declaration Exh.28 admits that initially deceased was taken to Sub District Hospital, Basmath but he admitted that he was not aware whether there was any MLC or medical papers of said hospital. He

claims that crime was registered at Vajirabad Police Station and papers to that extent were received through PW5 Sanjay (Police Naik). Such material indicates that no dying declaration was recorded at Sub District Hospital, Basmath where deceased was immediately taken. Rather on 07-04-2015 when deceased was further shifted to Civil Hospital, Nanded then exercise of recording dying declaration firstly at the hand of PW15 Vaijanath Mundhe and subsequently at the hand of PW1 Shaikh (Special Executive Magistrate) seems to have been taken. Therefore, apparently there is no prompt recording of dying declaration at Sub District Hospital, Basmath on 06-04-2015.

13. On going through Exh.19 and Exh.28, it seems that deceased after cooking in her house had been to house of her sister-in-law. Her dying declaration at Exh.28 shows that at around 06:45 p.m. on account of arrival of accused mother-in-law, she had been to house of her sister-in-law i.e. accused no.2. In dying declaration at Exh.28, it is informed that mother-in-law questioned deceased for coming there. Deceased had alleged that she was beaten by mother-in-law by abusing her in filthy language and further saying that she would be finished. In this statement, she has stated that her mother-in-law

accused Asina abused and beat her. Brother-in-law Amjad slapped her. Sister-in-law i.e. accused no.2 brought kerosene bottle, poured it on person of deceased and other brother-in-law Usman i.e. accused no.4 brought match stick, ignited it and set her on fire. Her husband ran away and did not return to her rescue.

14. Whereas in dying declaration at Exh.19, while answering question no.6, she has informed that accused no.2 Naseem, accused no.1 Amjad, accused no.4 Usman and accused no.5 Haseena to be present at the spot. To a question how the incident took place, deceased Ajmeri answered that *“her sister-in-law was teaching to her husband. She went to her sister-in-law's home and asked her husband to come home to have food. She asked accused no.2, why did she teach her husband? Upon which accused no.2 replied that, she did not teach. As she asked her to swear on her children and tell, she became angry and started abusing and beating deceased by holding her hair. Accused no.4 Usman and her mother-in-law accompanied her. Naseem poured kerosene on her person from 1 litre plastic bottle and ablazed her on fire with a matchstick and she started burning. She was wearing a red saree and a white polyester blouse at that time and as she ablazed, it stuck to her body and she*

burned. She do here swear on god and on her two children that, Naseem, her mother-in-law and Usman these three persons together burned her and attempted to murder her. These three persons are completely responsible for this incident. Her husband ran away from the spot when this incident took place. He did not accompany accused in this crime. He had left the place at the time of quarreling. He is not guilty in this matter."

15. On juxtaposition of Exh.19 and Exh.28, it is evident that in first dying declaration at Exh.28 deceased is naming mother-in-law for catching her hair, beating her and instigating others to pour kerosene and upon it being poured by sister-in-law, brother-in-law igniting her. Whereas in second dying declaration at Exh.19, she has attributed pouring to sister-in-law and igniting also to sister-in-law. Therefore, the dying declarations are apparently inconsistent.

CONCLUSION

16. We have noticed that initially inspite of injured being taken to Sub District Hospital, Basmath, no efforts are taken to record dying declaration at said hospital. Secondly, inspite of being shifted to Civil Hospital, Nanded in the night of 06-04-2015 and inspite of

communication to **PW1** Shaikh (Special Executive Magistrate) to record dying declaration at 09:30 a.m., he kept himself busy in doing his routine official work and paid visit to the hospital at 07:00 p.m. Even **PW15** Vaijanath Mundhe (API) inspite of knowing about occurrence and shifting of injured to Civil Hospital, Nanded, he has recorded dying declaration at around 12:00 Noon. That apart, it is also emerging that deceased was not proficient or conversant in Marathi being from Muhammadan community still her dying declarations are apparently noted in Marathi. **PW1** Shaikh (Special Executive Magistrate) himself being from the same community, instead of recording dying declaration in vernacular of deceased, on his own, he translated statement from Hindi to Marathi and such fact even he admits. Therefore, there are reasons to spell or cast doubt on the veracity of the dying declarations.

17. **PW3** Dr.Gurnamsingh, who gave endorsement, has candidly answered and admitted that when PW15 Vaijanath Mundhe (API) recorded dying declaration Exh.19 and on the strength of which crime was registered, it was recorded in presence of relatives of the deceased. For the more reasons, aspect of voluntary statement comes under shadow of doubt.

18. Another distinct feature in the case is that none other than **PW7** Shaikh Raeesabeg, mother of deceased and immediate neighbours have not supported prosecution. Therefore, in the totality of circumstances, here in this case, dying declarations are not consistent and not worthy of credence for the reasons discussed in aforesaid paragraphs.

19. We have gone through the judgment and order under challenge. Inconsistencies in dying declarations, which are noticed by us and dealt in aforesaid paragraphs, are unfortunately not considered by the learned trial Judge and law on dying declaration has not been correctly appreciated and applied and therefore, said judgment requires interference. Accordingly, we proceed to pass following order :

ORDER

(I) Criminal Appeal stands allowed.

(II) The conviction awarded to appellant nos.(1) Shaikh Amjad S/o Shaikh Jalal, (2) Shaikh Naseem W/o Amjad, (3) Shaikh Riyaz S/o Shaikh Pashumiya, (4) Shaikh Usman S/o Shaikh Daud and (5) Shaikh Asina @ Haseena W/o Shaikh Pashumiya by the learned Additional Sessions Judge, Basmath, District Hingoli in Sessions Trial No.16 of 2015 on 08-12-2016 under Section 302 read with 34 of the Indian Penal Code stands quashed and set aside.

(III) All the appellants stand acquitted of the offence punishable under Section 302 read with 34 of the Indian Penal Code.

(IV) The appellants be set at liberty, if not required in any other case.

(V) Fine amount deposited, if any, be refunded to the appellants after the statutory period.

(VI) It is clarified that there is no change as regards the order regarding disposal of Muddemal.

(VII) In view of disposal of the appeal itself, Criminal Application Nos.1900 of 2022 and 2594 of 2023 do not survive and stand disposed of.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE