



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.108 OF 2021

Manika s/o Dhondiba Jogdand
Age 38 years, occ. Labour,
R/o Anteshwar, Tq. Loha,
District Nanded

... APPELLANT

VERSUS

The State of Maharashtra
through Police Station,
Sonkhed, Tq. Kandhar,
District Nanded
(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)

... RESPONDENT

.....
Mr. S.R. Bagal, Advocate holding for
Mr. B.N. Gadegaonkar, Advocate for appellant
Mr. A.R. Kale, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 25th June, 2024

Date of pronouncing judgment : 28th June, 2024

JUDGMENT (PER R.G. AVACHAT, J.) :

The challenge in this appeal is to a judgment and
order of conviction and consequential sentence, dated

27/11/2020, passed by the Court of learned Additional Sessions Judge, Kandhar, District Nanded, in Sessions Case, No.18/2016. Vide impugned judgment and order, the appellant was convicted for committing murder of his wife and, therefore, sentenced to suffer imprisonment of life and fine with default stipulation.

2. The facts in brief, giving rise to the present appeal are as follows :

Chandrabhagabai (deceased) was a sister of P.W.1 Pandurang (informant). She had married the appellant ten years before January 2016. The couple was blessed with two children. All of them would reside together at village Adgaon, Taluka Loha.

3. The appellant was addicted to alcohol. He returned his home by 5.00 p.m. on 8/1/2016. He asked Chandrabhagabai (deceased) to pay him money for consumption of liquor. She did not pay him money as she had none. The appellant thereupon got enraged. He latched the entrance door from inside. There was a can containing 3 litres

of kerosene. He emptied the can on her person and set her ablaze. The appellant thereafter ran away. Chandrabhagabai (deceased) raised alarm. Her neighbour Madhu Chinchale rushed. He extinguished fire. Somebody from the village informed her parents about the incident. After an hour, her parents and brother arrived. They first took her to Primary Health Centre, Loha. She was then shifted to Civil Hospital, Nanded. Unfortunately, she succumbed to the injuries on the following day.

4. At the Civil Hospital, Nanded, Police Head Constable on duty there (P.W.4 Rohidas) recorded statement of the deceased. On her demise, it became her dying declaration (D.D.).

5. P.W.1 Pandurang, brother of the deceased lodged the First Information Report (F.I.R.) (Exh.20). A crime vide C.R. No.02/2016 came to be registered at Sonkhed Police Station for offences punishable under Sections 302 of the Indian Penal Code and investigated as well. P.W.1 Pandurang and his parents had rushed to the place of the deceased. They had accompanied her to the hospital. She related her

mother the appellant to have set her ablaze after pouring kerosene on her person. As such, the case is based on oral and written dying declarations.

6. During investigation, crime scene panhanama was drawn. Articles like kerosene can, pieces of burnt Saree and petticoat, ash and ash mixed with soil came to be seized. Inquest (Exh.19) and autopsy (Exh.36) were conducted on the mortal remains of the deceased Chandrabhagabai. Her clothes too came to be seized. All the seized articles were sent to Forensic Science Laboratory, Nanded. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the charge sheet was filed before the Court of learned Judicial Magistrate, First Class, Kandhar, who in turn committed the case to the Court of learned Additional Sessions Judge, Kandhar.

7. The learned Additional Sessions Judge, Kandhar (Trial Court) framed the Charge (Exh.5). The appellant pleaded not guilty. It is his defence that, he has one step brother. Both of them owned two acres of agricultural land each. There was a water pipeline to irrigate the land. An

electric motor was installed. There were disputes between him and his step brother over distribution of water. An agreement was entered into between the two brothers. He agreed to sell the motor to him. Chandrabhagabai (deceased) was not agreeable to the same. She picked up quarrel with the appellant on that count. The appellant's step brother hurled abuses at her. She, therefore, in a fit of anger, set herself ablaze. He (appellant) had tried to extinguish fire. He thereby suffered burns.

8. To bring home the charge, the prosecution examined 12 witnesses and produced in evidence certain documents. On appreciation of the same, the Trial Court convicted the appellant and consequently sentenced as stated above.

9. Heard. Learned Advocate for the appellant first took us through the relevant evidence on record to submit the D.D. (Exh.24) recorded by P.W.4 Rohidas inspires no confidence. He took us through the same to indicate it was a product of P.W.4's imagination. Certain admissions given by him were also adverted to. Relations of the deceased namely

parents and brothers were around while her so called dying declaration was recorded. Tutoring was not ruled out. According to learned Advocate, there was ample time to have the statement of Chandrabhagabai recorded by Special Executive Magistrate. Even no attempt was made to secure the presence of Special Executive Magistrate. The deceased had suffered 94% of burns. There were no burns to both the palms. Still, P.W.4 Rohidas obtained left toe impression on the D.D. The Ward Note indicates the Medical Officer (P.W.5 Dr. Satyajit) to have not made entry therein about having examined the deceased before and after recording of her statement. Inconsistency inter-se evidence of certain prosecution witnesses was also brought to our notice. It was also submitted that the appellant too suffered 24% burns. He was hospitalised for 6 days. The prosecution did not explain the injuries on his person. The dying declaration is silent to state about the same. According to learned Advocate, the evidence adduced in the case inspires no confidence to sustain the conviction. He, therefore, urged for allowing the appeal.

10. Learned A.P.P. would, on the other hand, submit

that, the evidence of informant Pandurang (P.W.1) almost went unchallenged. Only suggestion as regards tutoring was given to him. The conduct of the victim would suggest that, she was not tutored. The inquest panchanama (Exh.19) indicates both the hands of the deceased were burnt. The spot of incident is the residential house of the appellant. When the neighbours and relations had reached the place, he was not around. The same reinforces the contents in the D.D. that the appellant fled after setting his wife ablaze. So far as regards injuries on the person of the appellant are concerned, the learned A.P.P. would submit that, the medical papers on record would indicate that he was admitted in the hospital two days after the incident. The burns suffered by him are not in relation to the incident in question. It is within the special knowledge of the appellant as to how did he suffer the burns. It was, therefore, for him to explain the same.

11. According to learned A.P.P., even a person suffering 100% of burns, can make a statement. In the case in hand, the Medical Officer Dr. Satyajit (P.W.5) certified her to have been conscious and mentally fit to make the statement. The same reinforces the prosecution case. He relied on the

following two judgments of the Apex Court and ultimately urged for dismissal of the appeal.

- (1) M. Sarvana @ K.D. Saravana Vs. State of Karnataka (Criminal Appeal No.79 of 2010, decided on 24/7/2012)
- (2) Vijay Pal Vs. State (GNCT) of Delhi (Criminal Appeal No.2153/2011, decided on 10/3/2015)

12. Considered the submissions advanced. Perused the evidence and the judgment impugned herein. Let us advert to the evidence in the case and appreciate the same.

13. Based on the evidence of P.W.2 Dhondiba, the inquest panchanama (Exh.19) has been admitted in evidence. His evidence went unchallenged. The inquest panchanama indicate the deceased to have suffered burns all over her body i.e. from her toes up to her head.

14. The Medical Officer Vinod (P.W.8) conducted the post mortem examination. The post mortem report is at Exh.36. Admittedly, Chandrabhagabai died due to burns. The post mortem report indicates her to have suffered following burn injuries :

1) Superficial to deep burns present over following parts of body with blackening, reddening, peeling of skin. Margins infammed, floor reddened, blisters present at the places of singeing of scalp and body hairs.

Area	Percentage	Spread area
1) Head, neck and face	06%	Left parietal region left side of face, nape of neck
2) Right upper limb	09%	Palmer ridges
3) left upper limb	08%	Palm
4) Chest and abdomen	18%	---
5) Back	18%	---
6) Right lower limb	17%	Sole
7) Left lower limb	17%	Sole
8) Genitals	01%	

15. Admittedly, deceased Chandrabhagabai suffered burns at her residential house. The crime scene panchanama indicates it was a house with tin sheet roof. Almost all the household articles in the house had been gutted in fire. A plastic can was seized from the crime scene besides pieces of burnt Saree.

16. The question is, whether the appellant is the author of the crime. Admittedly, Chandrabhagabai suffered burns by 5.00 p.m. on 8th January. She remained alone outside of her residence for about an hour until her parents and brother came from their place and first took her to Primary Health Centre, Loha and then shifted her to Civil Hospital, Nanded.

17. P.W.1 Pandurang, brother of Chandrabhagabai deposed that, it was his brother who informed him the appellant to have set Chandrabhagabai ablaze. He, therefore, rushed to the house of the appellant. It is further in his evidence that, Chandrabhagabai was sitting on the road just in front of her house. She had suffered extensive burns. They took her to the hospital. He then lodged the F.I.R. (Exh.20). It is in his evidence that, she was alive overnight. The police recorded her statement.

18. The evidence of P.W.1 Pandurang is relevant only to the extent of setting the criminal law in motion by lodging F.I.R. (Exh.20). He did not claim to have been told by Chandrabhagabai that appellant set her ablaze. During cross-examination of P.W.1 Pandurang, it has been brought on

record that, the appellant has a step brother. Both of them owned two acres of agricultural land each. A water pipeline was laid for irrigating the land. The appellant would also do tailoring work to earn his living. According to him, the appellant was financially not unsound. It is further in his evidence that, Chandrabhagabai was given oxygen and IV fluid at Nanded hospital. He, however, denied that she was dizzy and therefore unable to make a statement. His evidence further suggests that, he and his parents were present while police recorded her statement (Exh.24). He, however, stoutly denied his sister (Chandrabhagabai) to have committed suicide on account of a quarrel between her and her brother-in-law over issue of pipeline in the agricultural field. He claimed ignorance about the appellant to have suffered burns while attempting to extinguish fire.

19. P.W.4 Rohidas was Police Head Constable on night duty at Police Chowki at Government Hospital, Vishnupuri, Nanded on 8/1/2016. He received a letter from Casualty that a burn patient was taking treatment in Ward No.9 and he shall record her statement. He, therefore, went to the Ward No.9. He met Dr. Satyajit (P.W.5). The doctor took him to the bed on

which Chandrabhagabai was. P.W.5 Dr. Satyajit examined her and gave an endorsement on a blank piece of paper provided by him. P.W.5 Dr. Satyajit certified her to be conscious to make a statement. He then made enquiry with Chandrabhagabai to find her to be conscious and able to make her statement. He then recorded her statement, which reads thus :

"समक्ष स. द. विष्णुपुरी नांदेड वॉर्ड नं. ०९ युनिट ०१ विचारले वरून सांगते की मी वरील ठिकाणची राहणारी असून मला एक मुलगा, एक मुलगी, पती असा परिवार असून आम्ही शेतात मोलमजुरी करून उपजीविका भागवितो.

दि. ८/१/२०१६ रोजी सायंकाळी पाच वा. राहते घरी माझा पती बाहेरगावाहून घरी परत आले व मला दारू पिण्यासाठी पैसे मागू लागले. माझे जवळ पैसे नसल्याने पैसे दिले नाहीत, पैसे का देत नाहीस असे म्हणून घराची आतून कडी लावून स्वयंपाकासाठी आणलेले पाच लिटरचे कॅनमध्ये अंदाजे तीन लिटर रॉकेल होते. ते सर्व भरलेले तीन लिटरचे कॅन माझे अंगावर टाकले व काडी ओढून माझे अंगावर टाकून दाराची कडी कडून पळून गेला व मी आरडा ओरड केल्याने गावातील मधू चिंचाळे याने येऊन माझे अंगावर पाणी टाकून लागलेली माझा अंगाला आग विझवली. नंतर गावातील कुणीतरी माझ्या आई वडिलांना फोन लावल्याने माझे आई वडील एक तासाने येऊन मला स. द. लोहा येथे नेले व तेथून १०८ ऍम्बुलन्सने स. द. विष्णुपुरी नांदेड येथे वॉर्ड नं. ०९ मध्ये दाखल केले.

वरील घटनेत पायापासून डोक्यापर्यंत ९०% जळाले आहे. दि. ८/१/२०१६ माझे पती मला दारूसाठी पैसे मागितल्याने ते न दिल्याने मला घरातील आणलेले रॉकेल माझे अंगावर टाकून काडी लावून जीवे मारण्याचा प्रयत्न केला. तरी माझी त्याचे विरुद्ध कायदेशीर फिर्याद आहे. त्याचेवर कायदेशीर कार्यवाही व्यावी ही नम्र विनंती.”

20. It is further in his evidence that, after recording of the statement was over, the doctor (P.W.5) again examined her and certified to be well oriented. His evidence further indicates that, since both the hands of Chandrabhagabai were burnt, he obtained her left toe impression below her statement. He too signed below the statement (Exh.24).

21. P.W.4 Rohidas was subjected to a searching cross-examination. It has been brought on record through his cross-examination that, it was 10.15 p.m. He reached Ward No.9. Other patients were also taking treatment in the Ward. Relatives of the patients in the Ward were around their respective patients. He tried to clarify that, mother of Chandrabhagabai had gone to fetch water. He learnt the same from Chandrabhagabai (deceased). He admitted that, from Exh.24, it could not be stated by what time he recorded the

victim's statement/ D.D. It is further in his evidence that, he was aware that services of Special Judicial Magistrate need to be availed to have a statement of patient recorded. It is further in his evidence that, he had contacted Special Executive Magistrate in that regard. Even he had issued a letter to that effect and made entry in the Chowki Register. He, however, did not place on record any documentary evidence in that regard. It is further in his evidence that, condition of Chandrabhagabai was critical. He, however, denied that, she was groaning and speaking irrelevant. He was confronted with the statement (Exh.24), wherein the sentence "from foot to head there are 90% burns" has been written in small letters. He, however, denied the said sentence to have been inserted later on. He then admitted that, first four lines of Exh.24 till the words, "I earn my livelihood by working in the field" were written by him as per, "statement beginning format". He denied Chandrabhagabai's left thumb was not burnt. He denied that, he first recorded the statement and on the following day obtained the doctor's endorsement thereon.

22. It is further in his evidence that, Chandrabhagabai had related him that her husband (appellant) had habit of

consuming liquor. He admitted that, same has not been written in her statement (Exh.24). According to him, he might have forgotten to write it. It is further in his evidence that, D.D. (Exh.24) is silent to contain that her husband got angry. The children and other persons came there and Madhu Chinchale extinguished the fire by putting clothes on her. To be specific, the question put to him and answer thereto given by the witness is reproduced below, for better appreciation :

“Question : Why the above stated sentences are not mentioned in Exh.24 ?

Answer : Patient tells too many things but we have to cut it short and write in the statement.”

23. The evidence of this witness indicates that, he being a police officer, appears to have recorded the victim's statement in their usual style of recording First Information Report.

24. P.W.5 Dr. Satyajeet testified that, P.W.4 Rohidas had been to him by 11.00 p.m. on 8th January. He examined Chandrabhagabai and certified her to be conscious oriented to

make a statement. He made such endorsement on blank paper provided by P.W.4 Rohidas. It is at Exh.26. It is further in his evidence that, after recording of her statement was over, he again examined her and gave his similar endorsement (Exh.27) below her statement.

25. During his cross-examination, it has been brought on record that, he was in his cabin while P.W.4 Rohidas had come to him. The patient had suffered 90% burns. Her face had suffered 6% burns. The injuries were superficial to deep. There was bandage on her person. There was even a burn injury at her mouth. According to him, it was not severe injury. Her neck was also burnt. He gave a vital admission that, when a patient is examined, an entry in the Ward Notes was taken. He had brought with him the Ward Notes **He admitted that, there was no entry in the Ward Note indicating him to have examined her by 11.00 p.m. on 8/1/2016.**

26. According to him, deep burns may be called third degree burns. It is further in his evidence that, when he examined Chandrabhagabai, she was groaning in pain. He, however, denied that, she was unable to speak. He admitted

that, there was overwriting on the date mentioned under his first endorsement (Exh.26).

27. P.W.6 Vitthal was the brother of deceased. It is in his evidence that, on 8/1/2016, Chandrabhagabai (deceased) called him on his cell phone and told to have been set ablaze by the appellant and then the appellant ran away. She asked him to come and take her to the hospital. It is further in his evidence that, his brother Pandurang (P.W.1) went to her house in an Omni Van of one Govind Kshirsagar.

The cross-examination of this witness indicates that, his police statement is silent to record therein the deceased to have informed him of having set her ablaze by her husband (appellant).

28. P.W.7 Nilawatibai was the mother of the deceased. Her evidence indicates that, having learnt Chandrabhagabai to have suffered burns, she along with her son went to her place and first rushed her to Government Hospital, Loha for treatment. When she enquired with Chandrabhagabai as to how did she suffer burns, she told him the appellant was

asking for money for consumption of liquor. She refused. The appellant therefore poured kerosene on her person, set her ablaze and ran away.

Cross-examination of this witness indicates that, due to burns, the deceased was in trouble. She was serious. Pipes were inserted in her nose and mouth. She along with her husband and son were present with Chandrabhagabai (deceased) in the hospital. She denied to have had tutored Chandrabhagabai to give statement against the appellant.

29. P.W.9 Govind was the neighbour of Chandrabhagabai (deceased). It is in his evidence that, Chandrabhagabai demanded cell phone of him. He gave her. She made a call to her parents. According to him, she told them to have set herself ablaze.

This witness did not stand by the prosecution. He was therefore subjected to cross-examination by learned A.P.P. Nothing material could be brought on record through his cross-examination except he was confronted with his police statement to bring on record what he has stated to the police.

The same cannot partake character of substantive evidence.

30. P.W.10 Madhukar Chinchale would reside in the vicinity in which the appellant was residing. On hearing cries, he rushed to the house of the appellant. He saw Chandrabhagabai was burning. He tried to extinguish fire by pouring two buckets of water on her person. She was totally burnt.

31. P.W.11 Govind was the Driver of the vehicle in which Chandrabhagabai was rushed to the hospital. He denied her to have made any statement indicating the appellant to have set her ablaze. As such, he did not stand by the prosecution. During his cross-examination, nothing could be brought on record except confronting him with his previous statement to police and learned Magistrate.

32. P.W.12 Dattatraya is the investigating officer, who filed charge sheet after completion of the investigation.

APPRECIATION :

33. In case of Vijay Pal (supra), it has been observed :-

“20. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW-1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

21. It is contended by the learned counsel for the appellant when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval v. State of Gujarat* (1992) 4 SCC 69, wherein it has been held a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial Court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

22. In *State of Madhya Pradesh v. Dal Singh and Others* (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

34. In case of M. Sarvana (*supra*), it has been

observed in paragraph No.12 as under :

“12. In the case of Bhajju (supra), this Court clearly stated that Section 32 of the Evidence Act, 1872 was an exception to the general rule against admissibility of hearsay evidence. Clause (1) of Section 32 makes statement of the deceased admissible, which has been generally described as dying declaration. The court, in no uncertain terms, held that it cannot be laid down as an absolute rule of law that dying declaration could not form the sole basis of conviction unless it was corroborated by other evidence. The dying declaration, if found reliable, could form the basis of conviction. Similar principle was stated by this Court in the case of *Surinder Kumar v. State of Haryana* (2011) 10 SCC 173.”

35. There can be no two views over what has been observed in the aforesaid two authorities relied on by learned A.P.P. We have to appreciate the facts of the present case in the light of the aforesaid legal principles.

Chandrabhagabai (deceased) had married appellant ten years before she died on 9/1/2016. The couple was blessed with two children. Appellant's financial condition was not unsound. Chandrabhagabai suffered extensive burns by 5.00 p.m. on 8/1/2016. Admittedly, her parents and brother Pandurang (P.W.1) rushed to her place and shifted her to the

hospital. On the following morning she breathed her last. She had suffered 90% of burns. P.W.1 Pandurang who lodged the F.I.R. though was accompanying Chandrabhagabai to take her to the hospital, did not state her to have made him any statement suggesting the appellant to have set her ablaze. In the hospital, P.W.4 Rohidas was on duty Police Head Constable. He claimed to have recorded Chandrabhagabai's statement (D.D. - Exh.24). Close reading of the said statement would indicate that it was scribed like recording of an F.I.R. Some matter appearing therein seems to have been incorporated by P.W.4 Rohidas on his own. The Ward No.9 in which Chandrabhagabai was admitted, has been recorded therein. It is just difficult to imagine that the victim who had suffered 94% burns would state the Ward Number wherein she was admitted. The another sentence that she was rushed to the hospital in 108 Ambulance also appears to be incorporated by P.W.4 Rohidas on his own. Moreover, some statements which have been stated to hereinabove in Bold, i.e. **He admitted that, there was no entry in the Ward Note indicating him to have examined her by 11.00 p.m. on 8/1/2016,** appear to have been incorporated by he himself. His answer that "Patient tells too many things but we have to cut it

short and write in the statement” speaks in volumes that he did not record the statement of the victim Chandrabhagabai as narrated by her. Admittedly, her brother and parents were in her company.

36. P.W.5 Dr. Satyajit testified to have examined Chandrabhagabai before and after recording her statement. On both the occasions, he certified Chandrabhagai to have been conscious to make the statement. He admitted that, first he gave endorsement on the blank paper supplied to him by P.W.4 Rohidas. It is in his evidence that, he was in his Chamber while P.W.4 Rohidas met him. His evidence further indicates that, whenever a patient is examined, a note thereof is taken in Ward paper. The concerned Ward papers were with him while he was giving evidence in the Court. He was confronted therewith. He admitted that, the Ward paper does not indicate any note suggesting him to have had examined Chandrabhagabai to find her conscious oriented to make statement. The D.D. (Exh.24) does not indicate by what time it was recorded. The Medical Officer who conducted the post mortem admitted that the palms of the deceased had not suffered burns. While P.W.4 Rohidas, who recorded the D.D.,

testified that, since hands of Chandrabhagabai were completely burnt, he obtained her toe impression below her statement. This indicates that, P.W.4 Rohidas could have obtained thumb impression of Chandrabhagabai below her statement. In her statement she has stated that, somebody from her neighbourhood made a phone call to her parents and informed about the incident. While as per the case of the prosecution itself, P.W.1 Pandurang and P.W.6 Vitthal. It was Chandrabhagabai who herself made a phone call to her brother and informed them to have been set ablaze. As such, this is mutually exclusive evidence.

37. P.W.10 Madhukar Chinchale claimed to have rushed to the place of the appellant and poured water on the person of Chandrabhagabai to extinguish fire. While it is in the evidence of P.W.4 Rohidas that, the fire was extinguished by covering a quilt around her person. This is also a glaring inconsistency. True, when the relations of the deceased and P.W.10 Madhukar had rushed to the house of the appellant, nobody speaks of the presence of the appellant thereat. There are on record medical papers indicating the appellant to have suffered 24% of burns. His MLC (Exh.60) indicates it to have

been issued by the Medical Officer, it was issued on 30/3/2016, but it was dated 10 (8/1/2016). 8/1/2016 is the date of the incident. The column of date in MLC indicates that there is overwriting on the figure Zero '0' of the figure '10'. Figure '0' appears to have been converted from the figure '8'. The appellant could be said to have been prejudiced by non-examination of the Medical officer who had issued this MLC. Had he been examined, he could have been confronted therewith to solicit the explanation as to whether it was really '8' or '10'. There is on record discharge card (Exh.61) issued by Shankarrao Chavan Government Medical College, Nanded, indicating him to have been admitted in the hospital on 10/1/2016 and discharged on 14/1/2016. The appellant suffered 24% of superficial to deep burns. Here, the case of the appellant that he tried to extinguish the fire appears to be probable. We do not accept the submission of learned A.P.P. that the appellant might have suffered burns two days after the incident and it is for him to explain how did he suffer the same. True, the appellant was not around while relations of the deceased and neighbours had reached. From the overwriting on MLC, it may appear that, he either rushed or was referred to Primary Health Centre on the very day on which the incident

took place. We have every reason to observe the appellant must have suffered burns in the very incident in which Chandrabhagabai (deceased) suffered the same. If the D.D. (Exh.24) of Chandrabhagabai recorded by P.W.4 being true, he would have referred therein the appellant to have attempted to extinguish fire and he too suffered burns, when according to the prosecution it was she who herself made a phone call to her relations.

38. As already observed above, the oral dying declaration made by the deceased to her mother is to be taken with a pinch of salt. The same is inconsistent with the facts as regards non-disclosure of the appellant to have suffered burns and it was who (whether Chandrabhagabai herself or her neighbour) contacted her brother to relate about the incident. For all these reasons, we find the prosecution evidence to have not been inspiring confidence. More so, when the prosecution fails to explain how did the appellant suffered 24% of superficial to deep burns. Based on such kind (quality) of evidence, the Trial Court ought not to have convicted the appellant. A benefit of doubt needs to be extended to the appellant.

39. In the result, the appeal succeeds. Hence the order :

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and consequential sentence dated 27/11/2020, passed by learned Additional Sessions Judge, Kandhar in Sessions Case No.18/2016 is hereby set aside. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. The appellant be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-