



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.792 OF 2003

Sanjay Sandu Bansod,
Age : 25 years, Occu. : Business,
R/o. Phulambri, Tq. Phulambri,
Dist. Aurangabad

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra

... Respondent.

...
Mr. V. R. Dhorde a/w. Mr. S. P. Nimbalkar h/f. Mr. R. N. Dhorde,
Senior Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26th JUNE, 2024

PRONOUNCED ON : 2nd JULY, 2024

JUDGMENT :

1. Instant appeal arises out of judgment and order passed by learned Sessions Judge, Aurangabad dated 29.11.2003 in Sessions Case No.115 of 2001, by which present appellant (Original accused no.1), is held guilty and convicted for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

FACTS GIVING RISE TO SESSION'S TRIAL

2. Deceased Rekha was married to present appellant in the year 2000. She went to cohabit with her husband, mother-in-

law and sister-in-law. Everything was smooth for a period of two months, however, thereafter, accused persons started ill treating Rekha on petty counts and also there was demand of colour T.V.. In background of such demand, according to prosecution, there was physical and mental cruelty. Husband gave burn marks on her hand and beat her. Whenever Rekha visited her parents, she reported about treatment meted out to her. She wept and narrated about conduct of accused towards her. On 29.12.2000, accused persons incinerated her. Mother PW1 Sumanbai lodged report at Exh.15.

On the basis of crime registered at Phulambri Police Station, investigation was carried out by PW9 API Ashok Jaharwal and accused were charge-sheeted for commission of offence under sections 498A, 302 and 306 read with section 34 of IPC.

Learned Sessions Judge, Aurangabad, who conducted trial, after analyzing the oral and documentary evidence, including dying declarations, reached to a finding that, prosecution failed to establish the charges against accused nos.2 and 3 and acquitted them. However, learned trial Judge held appellant husband alone guilty that too only for offence punishable under sections 498A and 306 of IPC.

It is the above judgment and order, which is now taken exception to, by filing instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. Criticizing the judgment and taking exception to the findings, learned counsel for the appellant would point out that, initially charge was framed for offence punishable under sections 498A and 302 of IPC, but subsequently, by way of additional charge, offence of section 306 of IPC came to be added by way of alternative charge. According to him, the above aspects itself shows that prosecution was not sure as to what exactly had happened. He next submitted that, there is no iota of evidence in support of allegation of demand of T.V. and cruelty meted out for the same. Learned counsel took this court through the cross of parents of deceased, i.e. very informant and her husband, wherein, the financial condition of accused side has been admitted to be sound. He pointed out that, such material itself indicates that, accused were financially well off and they had all luxuries since prior to the marriage and there was no question of putting up a demand of T.V. as is alleged.

4. He pointed out that, general, vague and omnibus allegations are levelled by informant on the point of cruelty and

harassment. He submitted that, general allegations are raised by using words as "torture" and "ill treatment" on petty counts i.e. without elaborating any of such aspects. He pointed out that, apparently informant's testimony is palpably exaggerated version. According to him, even testimony of father, which is apparently recorded after a month of the death of Rekha, is vague and general in nature. That, none of the parent has defined role played by accused persons, in what form there was ill treatment, its nature and as to when such incidences took place. That, even testimonies of informant and her husband are full of material omissions. That, uncle and mediator have mere hearsay information and their evidence is of no avail to the prosecution.

5. He further pointed out that, the very first dying declaration of deceased Rekha is about suffering accidental burns. In spite of such dying declaration, at the instance of parents, police machinery is compelled to record second dying declaration with sole intention of implicating and involving entire family by levelling false allegations of pouring kerosene and setting Rekha to fire. Learned counsel pointed out that, the above is evident from the cross-examination of PW7 Shashikant Bomble, Special Executive Magistrate, who recorded both dying declarations Exhs.24 and 27. Thus, it is strenuously submitted that, there is

deliberate attempt to falsely implicate appellant and his family members merely out of annoyance. At this juncture, he submitted that, first dying declaration is in fact a truthful version and going by the same, it is his submission that, it is clearly a case of accidental burns. But, according to learned counsel, this crucial aspect has not been considered by learned trial Judge.

6. Learned counsel emphatically pointed out that, learned trial Judge not only acquitted accused nos.2 and 3 from charges under sections 498A, 306 and 302 of IPC as well as accused no.1 also acquitted from charge under section 302 of IPC, but on the same evidence, husband alone has been singled out and held guilty for offence under sections 498A and 306 of IPC by completely ignoring the dying declarations.

Consequently, for above reasons, learned counsel would submit that, the impugned judgment being patently illegal and perverse, cannot be allowed to be sustained and so urged to allow the appeal by setting aside the impugned judgment and order.

On behalf of Respondent :-

7. In answer to above, while supporting the judgment, learned APP would submit that, deceased promptly reported ill

treatment meted out to her by husband, mother-in-law and sister-in-law shortly after two months of marriage. That, she was not willing to go back. Informant mother has given detailed account of the demand and nature of ill treatment. That, her testimony is supported by her husband, uncle and a mediator. Learned APP pointed out that, though deceased gave dying declaration at Exh.24, it was due to threat and pressure of husband and in-laws. Second dying declaration at Exh.27 is the truthful version, wherein she had narrated involvement of husband and in-laws for pouring kerosene and setting her to fire. She suffered 96% burns. Only because of demand of T.V. not met, she was set to fire. That, learned trial court has correctly considered and appreciated the evidence adduced by the prosecution and has committed no error in holding charge for offence punishable under sections 498A and 306 to be proved only against husband. There is no perversity and illegality and hence, it is prayed that, appeal be dismissed.

STATUS AND SUBSTANCE OF EVIDENCE ON RECORD.

8. **PW1** Ramesh, pancha to spot panchanama did not support the prosecution.

PW2 Sumanbai informant mother at Exh.14 stated about marriage of deceased Rekha with accused, she going to cohabit and reside with husband and in-laws at Phulambri. After

two months of marriage, there was ill treatment, torture and beating on petty counts. During Diwali, when Rekha came, she narrated about the ill treatment. Accused persons thereafter demanded colour T.V.. On account of non fulfillment of demand, ill treatment continued and finally husband and in-laws set Rekha on fire and so she lodged report Exh.15.

PW3 Pandit, maternal uncle of deceased at Exh.16 deposed that, after two months there was cruelty. When Rekha came for Diwali after marriage, she informed that, there was demand of T.V. by husband. When he went to see her in burns ward in the hospital, she reported that, around 2:00 p.m., mother-in-law poured kerosene after sister-in-law caught hold of her and husband ignited her with matchstick.

PW4 Dr. Sunil Javale, autopsy doctor, who conducted P.M., calculated 96% burns and attributed death due to extensive burns.

PW5 Karbhari mediator, who settled the marriage of deceased Rekha and accused no.1 and claims that, he learnt from father of Rekha about demand and ill treatment. He claims that, he gave understanding to the accused husband. Even according to him, in the hospital Rekha told him that, there was severe cruelty to her. Husband and mother-in-law tortured her and they were

asking her to bring colour T.V. She told that, mother-in-law and sister-in-law and husband poured kerosene and set her on fire.

PW6 Shivaji an acquaintance of father of deceased, claims that, Rekha's father informed about accused persons demanding T.V. and giving ill treatment. Even he claims that in the hospital, Rekha told that husband, mother-in-law and sister of her husband poured kerosene and set her on fire.

PW7 Shashikant Bomble, Special Executive Magistrate, who recorded dying declarations (Exh.24 and 27).

PW8 Kashinath, father of deceased stated that, after two months, when Rekha came, she narrated about ill treatment for not giving T.V. along with other articles. She reported ill treatment to her. Husband gave her burns on the hand. He himself met with an accident and his deceased daughter came to meet and that time also reported about treatment given to her. After discharged, he learnt that, his daughter expired on account of she being set on fire by husband and in-laws.

PW9 PSI Ashok Jaharwal is the Investigating Officer, who narrated all steps taken during investigation till filing charge-sheet.

ANALYSIS

9. Here, on going through the entire evidence adduced by prosecution in trial court, it is noticed that, case of prosecution is rested on oral evidence of relatives and acquaintance of deceased and dying declarations i.e. both, oral dying declaration and written dying declaration. First oral evidence is taken up for analysis followed by written dying declarations.

ORAL EVIDENCE

10. On carefully re-appreciating the testimonies of informant PW2 Sumanbai; maternal uncle PW3 Pandit; mediator PW5 Karbhari; an acquaintance PW6 Shivaji and father PW8 Kashinath, it is noticed that, they are all deposing about smooth married life for a period of two months. Obviously, in the light of nature of charge and accusation, testimony of informant mother and father of deceased is of relevance and significance.

11. On carefully analyzing informants' evidence, it is emerging that, she is merely deposing about accused nos.1, 2 and 3 torturing her daughter and giving physical assault on petty counts. She has not elaborated what form of torture was inflicted or which of the three accused assaulted in what manner and at which place and when. She merely speaks that her daughter was kicked while doing household work. Who did, it is not elaborated by her. She

attributes demand of T.V. only to husband. Though she claims to have come across beating marks and burn marks during visit of Rekha, no complaint has been lodged nor husband is questioned in spite of he visiting their house. She also further alleges beating and inflicting burns to mother-in-law. It is surprising that, in spite of claiming to have heard about above maltreatment, in the hospital when accused no.1 husband and her daughter allegedly came to see informant's husband, who met an accident, husband is not questioned and deceased is rather made to accompany him without giving any understanding or questioning him.

Paragraph no.10 of the cross examination of the PW2 Sumanbai informant mother, categorically shows that, there is omissions in her report regarding assault by accused no.1 on petty counts, about visit of deceased to their house and reporting assault by mother-in-law, assault of accused on 7 to 8 times about husband and accused no.3 inflicting burns, assaulting on petty counts for not washing clothes, not providing food for four days. These are in fact material omissions and has direct reflection on the veracity of her oral testimony in the witness box. All allegations and accusations levelled are not finding place in her report at Exh.15.

12. As regards to testimony of PW3 maternal uncle is concerned, though he claims of hearing from deceased about

inflicting cruelty and in spite of claiming to go to visit in the hospital after she suffered burns, he has admitted that, he did not lodge report. Rather, according to him, after marriage he met Rekha for the first time at the time of Diwali. However, parents of deceased speak about hearing from Rekha regarding demand and ill treatment much prior to that. This witness in cross examination has answered that, she did not come for festivals and again corrected himself and stated that he met her after Diwali. He is also not deposing in the manner in which his sister i.e. informant has deposed about demand and ill treatment.

13. PW5, Karbhari, who seems to be the Mediator and friend of PW8 Kashinath, in his examination-in-chief itself has stated that, he was party to settling the marriage. He has given different version than that given by informant. As according to him, he and PW8 Kashinath went to the house of accused and at that time deceased starting weeping on seeing them and on being asked about reason of weeping, she allegedly told that, she was receiving cruelty to her. Informant has not narrated about any such visit. He merely stated about hearing from deceased that husband beat her and that accused nos.1 and 3 asked to bring colour T.V. and he claims to have given understanding to the accused at their house itself. But, as stated above, such version is

not finding place in the testimony of very informant. Even he claims that, in hospital deceased told that, husband, father-in-law, mother-in-law and sister-in-law poured kerosene and set her on fire. But very informant has not named father-in-law. Therefore, his version is also not consistent with that of informant.

14. PW6 Shivaji also seems to have hearsay information as he claims that, after 2 to 3 months, accused assaulted her and gave her cruel treatment. Again this is general and omnibus allegations. He further claims that he learnt from Rekha's father that accused Nos.1, 2 and 3 were demanding amount for purchasing colour T.V. He gave different version, which is not stated by informant PW2 Sumanbai or PW3 Pandit maternal uncle regarding accused persons not providing meals.

In cross examination, he answered that, during Nagpanchami festival, Rekha told about ill treatment. But, again, PW2 Sumanbai informant and PW3 Pandit maternal uncle do not speak about her visit for such festival. Therefore, his version is also not worthy of credence.

15. PW8 Kashinath, father claims that, after two months, there was ill treatment. According to him, when she came to see

him at his work place at Chitepimpalgaon, she reported that, there was ill treatment because he did not give colour T.V. though other articles were given and she said that, she was assaulted for not giving colour T.V. He promised to provide the same. He further deposed that, at the time of Diwali, deceased was called and only on being asked how was her married life, she started weeping and said that, there was more ill treatment to her, but on what count and in what form and by which of the accused, is not clarified by him. He claims to have seen beating marks and burn marks. According to him, burns were given for not giving T.V. He claims that he sent her to the house of accused and instructed accused not to torture his daughter, but again corrected himself and stated that, before sending her to accused, he alone had been to the house of accused to give instructions. Therefore, he has apparently tried to improvised version.

As pointed out his evidence is recorded after one month of death of Rekha. Paragraph No.6 of the cross examination is full of material omissions about informing police in his statement regarding demand of amount for purchasing colour T.V., about specifying his daughter and assuring to arrange T.V., about going to Phulambri to give understanding to the accused, about his daughter weeping in the hospital and saying that she would not go

back to the house of accused as she was receiving cruel treatment and severe treatment. Thus, whatever he has deposed in the witness box is apparently material omission not finding place in his statement to police.

16. Therefore, on the point of ill treatment and cruelty, in the light of above discussion and material, evidence of prosecution is apparently weak. General and vague allegations of ill treatment are levelled by informant mother, uncle, father and an acquaintance. Essential ingredients as contemplated under law for attracting charge of section 498A of IPC are not shown to be available. Testimonies of informant and father are apparently full of material omissions and contradictions, rendering their testimonies unworthy of credence.

DYING DECLARATION

17. Admittedly, case is based on dying declarations, and therefore, before adverting to the merits of the dying declarations, we wish to give a brief account of the settled legal position regarding evidentiary value of dying declaration and manner of its appreciation 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.

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 culled out 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 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.”

Again 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.”

Thus, the precedent 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.

In the light of above requirements, we proceed to re-appreciate the dying declarations first and then sift oral account of prosecution witnesses.

18. Both dying declarations (Exh.24 and 27) are noted by PW7 Shashikant Bomble, Special Executive Magistrate. He in his evidence at Exh.21 testified that, on 29.12.2000, around 4:30 to 5:00 p.m., police approached him with a request to record dying declaration and so he went to burn ward, approached doctor and thereafter, when doctor certified that deceased Rekha was fit to give statement, he recorded the same. According to him, she told

that, around 2:00 p.m. she ignited a gas and kept pot of milk over it. Saree slipped from her shoulder and fell on the flame and she caught fire and sustained burn injuries. He identified that dying declaration to be at Exh.24.

He further deposed that, at midnight again police approached him with a letter to record another dying declaration for second time and so he again went, at such time, she told that, her earlier statement was under pressure. Her husband had threatened that he would kill her by giving an injection and so out of fear and pressure, she gave false statement earlier. Witness claims that, thereafter he asked her that she should tell the truth and such time, she told that, around 2:00 p.m., there was quarrel between her and husband. He abused her and assaulted her on stomach and on being asked the reason for quarrel, she narrated that, her husband demanded a colour T.V. and subsequently mother-in-law poured kerosene and husband ignited her and they both left the house. Such dying declaration is identified by this witness at Exh.27.

19. Exhs.24 and 27 first and second dying declarations, for proper comprehension and understanding are translated and its version is as under : -

First Dying Declaration

Myself Shashikant N. Bomble
Special Executive Magistrate, Aurangabad.

Exh.24
Date : 29.12.2000

Dying Declaration

Name : Rekha w/o Sanjay Bansod
Age : 17 yrs.
R/at : Kasargalli, Fulambri, Aurangabad.
Occupation : Household work

Upon asking personally, myself Rekha Sanjay Bansod, giving this statement that, on 29.12.2000 at around 2.00 pm in the afternoon I lit the gas on the ***kadappa(ota)*** to heat the milk and place the utensil of milk on that. Suddenly the shoulder layer of my saree fell on the burning gas and the gas ignited and my saree caught fire and I got burnt. I was alone in the house at the time of the said incident. My husband, mother-in-law, father-in-law and brother-in-law were out of the house. I screamed because I was set ablaze, someone put a rug on my person and extinguished me. I don't know who brought me to Ghati Hospital in Aurangabad for treatment later. I have been married for 9 months and I am not pregnant yet. I have no problem with my mother-in-law. Also, this is no trouble and demand from my husband. I have not been burnt by anyone or by myself, I have been burnt by a gas flare. I have no suspicion or accusation against anyone regarding the said incident. The statement was read over to me, it is true and correct. I have given this statement in full consciousness and voluntarily, without under any pressure. The statement commenced on 29.12.2000 at 5.30 pm and ended at 5.50 pm.

Received
sd/-
PSI
29/12/2000 at 18.00 pm

Thumb Impression Left thumb.
Rekha W/o Sanjay Bansod.

sd/-
Shashikant Bombale
Spl.Executive Magistrate,
Aurangabad

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

Second Dying Declaration

Myself Shashikant N. Bomble
Special Executive Magistrate, Aurangabad.

Exh.27
Date : 30.12.2000

Dying Declaration

Name : Rekha w/o Sanjay Bansod
Age : 20 yrs.
R/at : Fulambri, Aurangabad.
Occupation : Household work

Upon asking personally, myself Rekha Sanjay Bansod, giving this statement that, the statement gave to the Special Executive Magistrate on 29.12.2000 before my death was because of my husband's fear and threats. They threatened to kill me by injection. Because of this fear, the statement I gave yesterday should not be accepted, it should be considered false. Today that is on 30.12.2000 the statement given is true statement without under any pressure and without being asked by anyone. On 29.12.2000 approximately at 2.00 pm I was at my house. I had a fight with my husband. And he kicked me in the stomach. My husband used to tell me to bring colour television from my maternal place, and because of that he was beating me for last 3 to 4 days. At 2.00 o'clock in the afternoon my mother-in-law poured kerosene on my person and lit a matchstick and set ablaze me. Kausalya Arjun Mahalkar, my sister-in-law held me while pouring kerosene on my person. After setting me on fire, three people ran away from the house. I came out of the house screaming after set ablaze. Then someone came and put a rug on me and extinguished me. I have been married for 9 months. After 2 to 3 months of my marriage, my mother-in-law, father-in-law and husband were harassing me. Husband was beating me. The statement was read over to me, it is true and correct. I have said this statement to be true under oath. My husband set me on fire and mother-in-law poured kerosene on my person so, I have been burnt. I have given this statement in full consciousness and voluntarily, without under any pressure. The statement commenced on 30.12.2000 at 9.00 am and ended at 9.30 am.

Thumb Impression Left thumb.
Rekha W/o Sanjay Bansod.

sd/-
Shashikant Bombale
Spl.Executive Magistrate, Aurangabad

A.D. case No. 115/01
Proved by P.W. No.7
sd/-

Sessions Judge, Aurangabad.
One copy received
sd/-
PSI
30.12.2000
01.35 am

20. PW7 Shashikant Bomble, in cross examination answered that, when he recorded first dying declaration, he did not ask Rekha whether she was under pressure of anybody and even after concluding the first dying declaration, she had asked her whether it was voluntary or under pressure of anybody and at that time, she narrated that, she was not under pressure and declaration is recorded as per her narration. He stated that, she told that not to accept first dying declaration. He admitted that, he did not record dying declaration in question answer form. Rest is all denial.

21. On carefully examining the contents of first dying declaration, which is shown to be recorded at 5:30 p.m. of 29.12.2000 is apparently regarding suffering burns accidentally. At midnight time, another attempt is made to get second dying declaration recorded. In the communication dated 30.12.2000 to PW7 Special Executive Magistrate at Exh.25, there is text that, on request of parents and relatives of the lady second dying declaration be recorded. Such material suggest that, on realizing first dying declaration regarding accidental burns, family members exerted pressure and second time PW7 Special Executive Magistrate recorded dying declaration at Exh.27, wherein, there

are allegations of mother-in-law pouring kerosene and husband ignited.

22. Testimony of PW7 Special Executive Magistrate shows that, deceased told him that first dying declaration was under pressure and fear of husband as he had threatened that he would kill her by giving injection. In fact, PW7 Special Executive Magistrate in examination-in-chief itself stated that, he asked the persons to leave the ward, who was standing there. Informant Sumanbai, in paragraph no.4, merely states that, her daughter said that, she would narrate only after her father-in-law and husband leave the ward, otherwise they would beat her. Mother does not speak what is stated by PW7 Special Executive Magistrate regarding husband threatening to kill by giving injection. Similarly, even maternal uncle PW3 Pandit, PW5 Karbhari Mediator, PW6 Shivaji does not speak of deceased Rekha informing that there was life threat at the hands of husband.

23. Therefore, apparently, the reason assigned for second dying declaration is that there was pressure by family members of deceased and hence, declaration involving husband and mother-in-law is got recorded second time.

Taking overall survey of the testimonies of witnesses, the manner of answers given by family members in cross examination suggests that, deliberate attempt is made to implicate accused appellant. In spite of informant, maternal uncle, mediator, claiming to have received oral oral dying declaration in the hospital itself, have not taken pains to report it to police chowky. Resultantly, their testimonies are not worthy of credence. For above reasons second dying declaration cannot be taken into account by ignoring first dying declaration at Exh.24, which is admittedly voluntary. Considering the same, occurrence of burns can be said to be accidental one.

24. To sum up here, for above reasons, there is no convincing, cogent or legally acceptable evidence on the point of sections 498A or 306 of IPC. Neither cruelty as contemplated under law is proved nor abetment or inducement coupled with *mens rea* is shown to be available so as to attract section 306 of IPC.

Hence, appellant succeeds.

25. Learned trial Judge has not considered and appreciated the evidence in its correct perspective. Settled principles while appreciating the dying declarations are lost sight of by learned trial Judge necessitating indulgence at the hands of

this Appellate Court. Hence, such findings and conclusion cannot be allowed to be sustained. Accordingly, I pass the following order :

ORDER

- I) Criminal Appeal No.792 of 2003 stands allowed.
- II) The conviction awarded to Sanjay Sandu Bansod in Sessions Case No.115 of 2001 by the learned Sessions Judge, Aurangabad on 29.11.2003 for the offence punishable under Sections 498A and 306 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498A and 306 of the Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)