



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

CRIMINAL APPEAL NO.616 OF 2021

Prabhakar Gangadhar Lokhande
Age 45 years, Occu. Service
R/o Gandhinagar, Main Road,
Ranjangaon (Shenpunji),
Tq. Gangapur, Dist.Aurangabad

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
through MIDC Waluj Police Station
Taluka Gangapur, District Aurangabad
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. N.S. Kadarale, Advocate for appellant
Mr. N.R. Dayama, A.P.P. for respondent
.....

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

Date of reserving judgment : 12th July, 2024.

Date of pronouncing judgment : 19th August, 2024.

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

This appeal takes an exception to a judgment of conviction and consequential order of sentence, dated 10/11/2021, passed by learned Additional Sessions Judge, Vaijapur, District Aurangabad in Sessions Case, No.59/2017,

whereby the appellant was convicted for offence punishable under Sections 302 and 498-A of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- and rigorous imprisonment (R.I.) for a term of 3 years and to pay fine of Rs.2000/- respectively, with default stipulations.

2. The facts giving rise to the present appeal are as follows :-

The appellant had married Sangita (deceased) about 20 years before the fateful day i.e. 17/5/2017. The couple was blessed with 2 grown up sons, P.W.1 Rahul and P.W.3 Shubham respectively. It is the case of the prosecution that, the appellant was unemployed. He was addicted to liquor. He would suspect loyalty of his wife Sangita (deceased). On the given day i.e. 17/5/2017, Sangita was home. The appellant returned home little past 12.00 noon. She asked him to pay Rs.500/- to her as she wanted to go for one function. He refused. The appellant suspected Sangita to have stolen his Rs.10,000/- and paid to her paramour. Sangita denied the same on oath in the name of her sons. The appellant asked her to accompany him to the Police Station. She joined him. Both of them came out of the house. Their

son Rahul (P.W.1) was also at home. Before the couple walked 4-5 steps, appellant pulled her (Sangita) hair and dragged back to his home. He abused and assaulted her. the appellant then doused kerosene on her person and set her ablaze by igniting a match stick.

3. Rahul (P.W.1) rushed her to Ghati Hospital, Aurangabad. Her admission to the hospital was informed to M.I.D.C. Waluj Police Station. A police official Eknath Ware (P.W.2) was deputed to visit the hospital and make enquiry into Medico Legal Case (MLC). He accordingly paid visit to the hospital. He learnt from the doctor the victim to have not been in a conscious state of mind to make a valid statement.

4. On the following day, he again visited the hospital and gave a letter to the Medical Officer on duty with a request to examine the patient and report whether she was conscious to make a statement. After having received doctor's opinion, he recorded statement (Exh.25) - F.I.R.—cum-dying declaration. He then issued a letter to Executive Magistrate (P.W.27), who too, after having received the opinion from the Medical Officer about the fitness of the patient, recorded a statement of Sangita. Meanwhile, the parents of Sangita had reached hospital.

5. A crime was registered. Sangita succumbed to the burns. Inquest (Exh.32) and autopsy (Exh.33) were conducted on her mortal remains. The autopsy report (Exh.33) indicates Sangita to have died of Septicemia due to burns.

6. A crime scene panchanama (Exh.17) was drawn. The appellant was arrested. Statements of persons acquainted with the facts and circumstances of the case were recorded. A kerosene can, a match box with match sticks therein, a half burnt match stick were seized from the crime scene. Clothes of the deceased too were taken charge of. All the articles seized were sent to Forensic Science Laboratory, Aurangabad for chemical analysis and report. Upon completion of the investigation, charge sheet was filed before the Court of learned Judicial Magistrate, First Class, Aurangabad. The case, in turn, was committed to the Court of learned Additional Sessions Judge, Vaijapur (Trial Court).

7. The Trial Court framed the Charge (Exh.11). The appellant pleaded not guilty. His defence was of false implication. According to him, Sangita committed suicide by setting herself ablaze.

8. To bring home the charge, the prosecution examined 8 witnesses and produced in evidence certain documents.

9. The Trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellant as stated above.

10. Heard. Learned counsel for the appellant would submit that, P.W.1 Rahul, son of the appellant and deceased was at home. His evidence in examination-in-chief itself supports the appellant. the prosecution did not declare him to have been won over nor was he subjected to a cross-examination by A.P.P. Evidence of P.W.1 Rahul, therefore needs to be read as it is. According to him, the deceased had related P.W.1 Rahul to have committed suicide by setting herself ablaze. His evidence would indicate that he and the appellant poured water on the person of Sangita to extinguish fire and then he rushed her to the hospital. The medical history given to the Medical Officer on duty was, "attempt to commit suicide". The learned Advocate took us through the evidence on record of each and every witness to ultimately submit the prosecution to have failed to bring home the charge beyond reasonable doubt. We do not propose to refer to his

submissions in further extenso since those may be our reasons to reach a particular conclusion.

11. The learned A.P.P. would, on the other hand, submit that, P.W.1 Rahul was none other than a grown up son of the appellant and the deceased. He was outside when the incident took place. He did not witness the incident. Rahul's evidence, therefore, carries less importance. Both, P.W.2 Eknath and the Executive Magistrate Sk. Munuruddin (P.W.6) have recorded statements of Sangita, which on her demise, became her dying declarations (D.Ds.). Both the D.Ds. are consistent with each other in material particulars. He even relied her father Bajirao (P.W.5) and the brother Sanjay (P.W.8) about having set her ablaze by the appellant, suspecting her character. Both these witnesses have even testified that the appellant would ill-treat Sangita for long before the incident took place. According to him, both these witnesses are independent one. Documentary evidence shall necessarily prevail over oral evidence of P.W.1 Rahul. According to learned A.P.P., a D.D. if found to be reliable, can be the basis for conviction. He, therefore, urged for dismissal of the appeal.

12. We have considered the submissions advanced. Perused the evidence on record and the judgment impugned herein.

APPRECIATION :-

13. Dr. Amit Jadhav conducted post mortem on the mortal remains of Sangita. According to him, Sangita died due to Septicemia due to burns.

14. Deceased Sangita had married the appellant 20 years before May 2017. The couple was blessed with two grown-up children. The incident took place on 17/5/2017 by little past noon at the home of the appellant. It was comprising of 2 rooms. The incident took place in the kitchen. Elder son Rahul was home.

15. Learned Advocate for the appellant admitted certain documents before the Trial Court. those are – crime scene panchanama (Exh.17), inquest (Exh.32) and post mortem report (Exh.33).

16. The crime scene panchanama indicates water was logged in the kitchen room. There was kerosene smell. A kerosene can containing 50 ml. kerosene, a match box with match sticks therein and half burnt match stick came to be

seized from the crime scene. P.W.1 Rahul, son of the appellant and deceased Sangita had rushed Sangita to Ghati Hospital, Aurangabad. We, therefore, first need to advert to the evidence of P.W.1 Rahul. It is in his evidence that, his father (appellant) was not doing any work. He would beat up his mother Sangita. He (appellant) would always quarrel with her. It is further in his evidence that he was present outside of his residence on 17/5/2017. He heard shouts of his mother. He, therefore, rushed to the house. He saw his mother in burning condition. Kerosene can was near his father. He and the appellant poured water on the person of Sangita. The appellant had said his mother to have lost his Rs.10,000/-. The appellant had suspected her (Sangita) to have taken the amount.

It is further in his evidence that, he and the appellant took his mother to Ghati Hospital, Aurangabad in autorickshaw. According to him, the appellant had alleged her to have paid Rs.10,000/- to her paramour. He denied the kerosene can was in the hand of the appellant. It is in his evidence that when he poured water on the person of his mother, the appellant asked him to not extinguish fire and let her die.

17. In his cross-examination, P.W.1 Rahul testified that, his younger brother Shubham was also present outside the house. He admitted that, his mother used to get annoyed as his father (appellant) was not doing any work to earn living. He was consuming liquor and beating her up. He then testified that, when he entered the house, he heard his father said “his mother to have set herself ablaze”. According to him, his father (appellant) got annoyed as his mother set herself ablaze. It appears that, this witness went on to admit the defence version. It is further in his evidence that, on way to Ghati Hospital in autorickshaw, the mother related to have committed mistake by setting herself ablaze. It was he who informed his maternal grandparents about his mother to have suffered burns. It is he who informed the doctor that his mother attempted to commit suicide.

18. It is further in his evidence that, on admission of his mother to hospital, all her relations visited the hospital. He shared with them as to how the incident took place. He went on to state that, his grandparents were present while his mother's statement was recorded. He, however, then testified that his mother had suffered 90% of burns. She was not in a position to talk. He was present near her when her two

statements were recorded. The officers who recorded her statements met relatives of his mother on arrival to Ghati Hospital. He further went on to state that, those officers were given some information, and based on which they prepared the statements, below whereof they obtained signature of his mother.

19. P.W.3 Shubham, another son of the appellant, testified his mother to have set herself ablaze. He was, therefore, cross-examined by the learned A.P.P. In his cross-examination, he deposed that, both, Rahul (P.W.1) and he were at their home when the incident took place. It was Rahul who extinguished the fire. It is his uncle and aunt who took his mother to Aurangabad in autorickshaw.

In the cross-examination by the defence Advocate, he testified that, he was playing outside of his home when his mother suffered burns.

20. P.W.2 Eknath was Assistant Sub-Inspector of Police, M.I.D.C. Waluj Police Station. Exh.23 is the M.L.C. Report. He (P.W.2 Eknath) was asked to make an enquiry into the same. He, therefore, went to the hospital on the same day i.e. on 17/5/2017. He issued a letter (Exh.24) to the Medical

Officer on duty to examine the patient and report whether she was fit to make a statement. The Medical Officer Dr. Sushilkumar (P.W.4) gave his opinion on the requisition (Exh.24) itself. In his opinion, the patient was not in the state to give valid statement. The said endorsement is at Exh.39, which reads thus :

“At present, the patient is not in the state to give valid statement.”

21. P.W.2 Eknath, therefore, went back to the Police Station. He again went to the hospital on the following day by 9.00 in the morning and again issued a requisition to the Medical Officer on duty. It is at Exh.25. The Medical Officer was requested to give his opinion as to whether the patient was fit to make a statement. The Medical Officer Dr. Sushilkumar (P.W.4) gave the endorsement on Exh.25 itself. The endorsement is at Exh.40, which reads :

“At present, the patient is in the state to give valid statement.”

22. Thereupon, P.W.2 Eknath recorded Sangita's statement (Exh.26), wherein she stated that, she was at her home by 12.00 noon on the previous day (17 May). Her

husband (appellant) came from outside. She requested him to pay Rs.500/- to her as she wanted to attend one function. The appellant thereupon started abusing her and said that she committed theft of his Rs.10,000/- and paid it to her paramour. He then started assaulting her. She, therefore, started to leave the house. The appellant thereupon pulled her and dragged her in the house. He took her to the kitchen to beat her up with fist and kick blows. As she had fallen on the floor due to the beating, the appellant doused kerosene on her person. He said her to have extra-marital relationship with someone. Then he ignited a match stick and set her ablaze. On hearing her cries, son (P.W.1 Rahul) came in. He poured water on her person. The appellant was present at the entrance door. She asked Rahul to not extinguish fire and let her die. She further related P.W.2 Eknath that it was Rahul who brought her to the hospital in autorickshaw.

23. Exh.27 is the requisition letter issued to the Executive Magistrate Sk. Munurudin (P.W.6) by P.W.2 Eknath, requesting him to record statement of Sangita.

24. P.W.6 Sk. Munuruddin was serving as a Clerk in Juvenile Court. He was a Special Judicial Magistrate as well. It is in his evidence that, he received letter from P.W.2 Eknath.

He, therefore, went to Ghati Hospital on 18 May. He issued a letter to the Medical Officer on duty to obtain his opinion as to whether patient was conscious to make a statement. According to him, the Medical officer gave endorsement on Exh.47 itself before and after recording of her statement. The Medical Officer certified the patient to have been fit to make a valid statement.

25. It is further in his evidence that, he then introduced himself to Sangita. He recorded her statement at 11.30 a.m. Before that, he ensured that neither police official nor her relations were around her. Then he recorded her statement. She related him that the appellant suspected her to have stolen his Rs.10,000/-. He even threatened her to take her to the Police Station. The appellant then dragged her to the kitchen room by catching her hair. The appellant pressed her mouth with one hand and doused her with kerosene. The appellant even set her on fire by igniting a match stick. She further related him that it was his son who brought her to the hospital. The D.D. recorded by P.W.6 is at Exh.48.

26. The Medical Officer on duty Dr. Sushilkumar (P.W.4) testified that, on 17/5/2017, P.W.2 Eknath, A.S.I., M.I.D.C. Waluj Police Station had been to the hospital and

gave him requisition (Exh.24). He examined the patient to find her to have not been in a state to give valid statement. He, therefore, gave endorsement (Exh.39) to that effect.

It is further in his evidence that, on the following day, P.W.2 Eknath had again been to the hospital. He (P.W.4 Dr. Sushilkumar) examined the patient and gave an endorsement that she was fit to make a valid statement. The endorsement was given on requisition (Exh.25). He referred to his endorsement (Exh.40). According to him, P.W.2 Eknath then recorded Sangita's statement. He thereafter again gave an endorsement below the statement. He referred to his endorsement to that effect (Exh.41). According to him, the patient was conscious to make a statement before and after recording of the same.

27. He was subjected to a searching cross-examination. It is in his evidence that, the endorsement at Exh.40 on Exh.25 was given by him by 9.15 a.m. on 18 May. Sangita had suffered 85 to 90% burns. Condition of a patient sustaining such percentage of burns was always fluctuating. He was unable to state by what time P.W.2 Eknath recorded Sangita's statement. He went on to state that, condition of Sangita was serious. He was in Ward meant for burn patients.

While P.W.2 Eknath had come to obtain his endorsement (Exh.40), relations of the patient were around her. He too was present for about 5 to 6 minutes. P.W.2 Eknath recorded Sangita's statement during that time. It is further in his evidence that, after P.W.2 Eknath asked the patient her name and address, Dr. Sushilkumar (P.W.4) left the ward. He then admitted that, he gave endorsement (Exh.41) on Exh.26 at 1.30 a.m.

He gave a vital admission to the following effect:

“It is true that, he did not know what was the condition of patient Sangita right from 1.30 a.m. to 1.30 p.m. on 18/5/2017.”

It is further in his evidence that, P.W.2 Eknath came to him and told to have recorded Sangita's statement and he asked him to give endorsement. According to P.W.4 Dr. Sushilkumar, he did not meet the patient when he gave endorsement (Exh.41). He went on to state that, in medical papers the history recorded was “suicidal 90% superficial to deep burns”. He, however, denied to have given endorsement without examining the patient.

28. P.W.5 Bajirao was the father of deceased Sangita. It is in his evidence that, Sangita had 25 years of married life. She was blessed with three children. The appellant would suspect her character. The appellant was addicted to liquor. He would beat Sangita. Sangita would relate her woes to him on phone. He used to reason with the appellant.

29. It is further in his evidence that, on 17/5/2017, his son Rahul (P.W.1) informed him about Sangita to have suffered burns. He, therefore, rushed to the hospital. He met Sangita there. On enquiry, he learnt from her that she demanded Rs.500/- from her husband (appellant). The appellant thereupon beat her up and suspected her to have stolen Rs.10,000/-. She further related him that the appellant poured kerosene on her person and set her ablaze. The appellant thereafter ran away. It was her son Rahul (P.W.1) who extinguished the fire.

30. During his cross-examination, he testified that, had he learnt the appellant to have set his daughter ablaze, then he would have certainly filed complaint against him on 18/5/2017 itself. It is in his evidence that, he did not like the appellant to have been addicted to alcohol. He and his son

were annoyed with the appellant since the appellant used to quarrel with his daughter under influence of alcohol.

31. P.W.8 Sanjay was the brother of deceased Sangita. It is in his evidence that, he rushed to the hospital on having learnt his sister to have suffered burns. On enquiry, Sangita related him to have been set ablaze by her husband (appellant) after having doused her with kerosene. The incident occurred on account of her having made a demand of Rs.500/-. The appellant alleged her to have stolen his sum of Rs.10,000/-. It was P.W.1 Rahul who extinguished the fire.

During cross-examination, he admitted that his statement was recorded after his sister died i.e. 18 days after the incident. He denied rest of suggestions put to him during his cross-examination.

32. P.W.7 Vithalsing was the Assistant Police Inspector, M.I.D.C. Waluj Police Station during the relevant time. He did the investigation of the crime. His evidence was not referred to by any of the parties to the appeal. It was, however, brought to our notice that, he admitted in his cross-examination that he received on 24/5/2017 a copy of the statement recorded by Executive Magistrate. According to him, it was Rahul (P.W.1)

who had admitted Sangita to hospital. He recorded his (Rahul) statement on 18 May itself. He denied Rahul (P.W.1) to have related him that his mother set herself ablaze.

The aforesaid is the evidence in the case.

33. The case is based on two written and two oral D.Ds. In case of ***Paniben (Smt.) Vs. State of Gujarat (1992) 2 SCC 474***, the Apex Court, in paragraph No.18 of its judgment, observed thus :

18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [Munnu Raja v. State of M.P.](#), (1976) 2 SCR 764.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [State of U. P. v. Ram Sagar Yadav](#), AIR 1985 SC 416; [Ramavati Devi v. State of Bihar](#), AIR 1983 SC 164.

(iii) This 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. K. [Ram Chandra Reddy v. Public Prosecutor](#), AIR 1976 S.C. 1994.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. *Rasheed Beg v. State of Madhya Pradesh*, [1974] 4 S.C.C. 264.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. ([Kake Singh v. State of M. P.](#), AIR 1982 S.C. 1021)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. ([Ram Manorath v. State of U.P.](#) 1981 SCC (Cr.) 531).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra v. Krishnamurthi Laxmipati Naidu*, AIR 1981 SC 617).

(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. *Surajdeo Oza v. State of Bihar*, AIR 1979 SC 1505).

(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. (*Nanahau Ram v. State of M.P.*, AIR 1988 SC 912).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. ([State U.P. v. Madan Mohan](#), AIR 1989 S.C. 1519)”

34. The Constitution Bench of the Apex Court in case of ***Laxman Vs. State of Maharashtra (2002) 6 SCC 710***, observed thus :

A. Evidence Act, 1872 – S.32 – Dying declaration – Fitness of state of declarant’s mind – Duty of the Court to decide and mode of deciding the same – Held, court must decide that the declarant was in a fit state of mind to make the declaration but where the eyewitnesses’ evidence (in the present case, the evidence of the Magistrate who had recorded the dying declaration) to that effect was available, mere absence of doctor’s certification as to the fitness of the declarant’s state of mind, held, would not ipso facto render the dying declaration unacceptable – The evidentiary value of such a declaration would depend on the facts and circumstances of the particular case.

B.

D. Evidence Act, 1872 – S.32 – Dying declaration – Doctor’s certificate regarding the declarant’s condition – Interpretation of – Where the medical certificate indicated that the declarant was conscious, held, it was indeed a hypertechnical view to say that there was no certification as to fitness of state of mind of the declarant – More so when the fitness of the declarant’s state of mind was proved by the testimony of the Magistrate who had recorded the dying declaration.

35. There can be no two views over legal proposition that if a D.D. found to be true and made voluntarily, can form basis for conviction.

36. Let us now appreciate the evidence in the case. The evidence of the son of the appellant and his father-in-law and brother-in-law would indicate that the appellant was addicted to alcohol. He would harass and ill-treat his wife Sangita (deceased). The appellant was unemployed. On the given day i.e. on 17/5/2017, Sangita was at her residence. The appellant came to his residence from outside. There both the sons were also at their residence, but were not actually in the house. Sangita suffered extensive burns at her residence. On hearing her cries, her son Rahul (P.W.1) rushed in the house to find his father (appellant) was present in the kitchen room. A kerosene can was lying on the floor. The appellant was abusing his mother. He alleged his mother to have stolen his sum of Rs.10,000/-. His evidence further indicates that, it was he and the appellant who extinguished the fire. According to him, he and the appellant admitted her to the hospital in autorickshaw. According to him, the appellant alleged his wife to have paid Rs.10,000/- to her paramour. He, in his examination-in-chief itself denied the father was armed with a

kerosene can. He, however, testified that, while he poured water on the person of his mother Sangita, the appellant told him, "Let her die". It is further in his evidence that, he informed his maternal grandfather and thereafter relations of his mother arrived to the hospital. P.W.1 Rahul was a prosecution witness. In his examination-in-chief itself, he supported the defence. Learned A.P.P., in-charge of the case, did not prefer to put him questions which are normally put in his cross-examination nor the learned A.P.P. informed the Court to have not been relying on the evidence of P.W.1 Rahul. In case of ***Virendra Vs. State of Madhya Pradesh (AIR 2022 SC 3373)***, relied on by learned Advocate for the appellant, it has been observed that, **"prosecution witnesses who were not treated as hostile – No attempt whatsoever was made either to treat them as hostile or to re-examine them except that of P.W.10 – Not even a suggestion was put to them on the presence of P.W.15 – In such a scenario, the statement made by the prosecution witnesses in favour of the accused would certainly inure to his benefit."**

37. As such, the prosecution's first witness make out it to be a case of suicide. Although his evidence indicates that his father (appellant) had abused his mother and even while he

was attempting to extinguish fire, said, "Let her die". According to him, his mother related him while on way to the hospital that she committed a mistake by setting herself ablaze.

38. As against this, we have two D.Ds. recorded, one by P.W.2 Eknath and the other by P.W.6 Sk. Munuruddin. P.W.2 Eknath was a police official. On admission of Sangita to the hospital, her Medico Legal Case (MLC) was registered and information thereof was given to the concerned Police Station. He, therefore, admittedly rushed to the hospital on the same day on which Sangita was admitted to the hospital. He gave a letter (Exh.25) to the Medical Officer on duty Dr. Sushilkumar (P.W.4). The Medical Officer, on examining Sangita, admittedly gave an endorsement that she (Sangita) was not fit to make a valid statement. The said endorsement has been reproduced above in paragraph No.20 (last line). P.W.2 Eknath had, therefore, no option but to return to the Police Station. He again went to the Police Station on the following day and gave a requisition to the very doctor (P.W.4 Dr. Sushilkumar) requesting him to examine the patient and give endorsement. P.W.4 Dr. Sushilkumar accordingly gave endorsement at Exh.25, certifying the patient to have been conscious to make a valid statement. The statement recorded by P.W.2 Eknath is

at Exh.64. It does not bear the doctor's endorsement either before or after recording of the same was over. Neither it contained any matter nor P.W.2 Eknath testified on oath to have put certain questions to her to ascertain her to be in conscious state of mind to make a statement. True, in the said statement Sangita allegedly reported him that the appellant would suspect her character and, therefore, used to harass and ill-treat her. She then narrated the incident as to how she was set ablaze after pouring kerosene on her person. The reason therefor was she had made a demand of Rs.500/-. The appellant had suspected her to have stolen his Rs.10,000/-. Her statement recorded by P.W.2 Eknath has also been referred to in extenso during his examination-in-chief (para 2).

39. Then we have a D.D. recorded by Executive Magistrate (P.W.6 Sk. Munuruddin). It was in question-answer form. It is at Exh.48. The same does not bear the time by which he recorded the same on 18/5/2017. It too does not bear endorsement of Medical Officer on duty certifying Sangita to have been fit to make a valid statement. True, P.W.6 Sk. Munuruddin had issued a requisition letter (Exh.47) to the Medical Officer on duty by 11.25 a.m. on 18/5/2017. The Medical Officer Dr. Sushilkumar (P.W.4) gave endorsement

thereon twice, certifying the patient to have been conscious oriented to make a statement.

40. A statement recorded by P.W.6 Sk. Munuruddin suggests the appellant to have set his wife ablaze after dousing her with kerosene. She related the Executive Magistrate that the appellant had suspected her to have committed theft of his Rs.10,000/-. She denied the same on oath in the name of her sons. Both of them were about to go to the Police Station. The appellant, however, dragged her back to the house and set her ablaze. She further informed the Executive Magistrate that she had made a grievance to her father-in-law in the past about the behaviour of the appellant. He (father-in-law), however, abused her instead of reasoning with his own son (appellant). Then we have two oral D.Ds., one made to the father Bajirao (P.W.5) and the other to P.W.8 Sanjay, brother of Sangita. The oral D.Ds. said to have been made to the father Bajirao (P.W.5) was on 17/5/2017 on which date she was admitted to the hospital, while the other one was on the same day, but late in the evening. Both, the father and brother of deceased Sangita did not lodge any report with police no sooner she related to them to have been set ablaze by her husband. Their statements appear to have been

recorded on the demise of Sangita. Sangita died on 28/5/2017 i.e. after 11 days after she suffered burns.

41. The question is, whether the D.Ds. said to have been made by the deceased inspire confidence. In our view, the answer would be, "No". The reasons therefor are :-

- (1) P.W.1 Rahul, son of the deceased and the appellant was at the residence while the incident took place. Although he was not an eye witness to the incident, he admittedly extinguished fire and admitted Sangita to the hospital. According to him, his mother (Sangita) set herself ablaze. So was related to him by her while on way to the hospital. He, therefore, gave the history (suicidal burns) to the Medical Officer on duty while admitting her to the hospital. The prosecution did not cross-examine him. As such, the evidence of the prosecution witness itself goes against the prosecution case.
- (2) The most mischievous part in this case appears to be the conduct of P.W.4 Dr. Sushilkumar. Admittedly, P.W.2 Eknath (police official) had been to the hospital on the day Sangita was admitted. That time, P.W.4 Dr. Sushilkumar examined Sangita and certified her to have been not in a mental frame to make a valid statement. According to the Medical Officer, her condition was serious and fluctuating as well. She was moaning. She had suffered 90% of burns. She

must have been administered pain killer/ sedative. When on the day on which she was admitted to the hospital, she was not in a mental state to make a valid statement. There is nothing on record in the nature of medical papers to indicate as to how her condition was improved to make a statement. True, P.W.4 Dr. Sushilkumar gave endorsement to both, P.W.2 Eknath and P.W.6 Sk. Munuruddin, who recorded statements of Sangita. The endorsements were to the effect that, patient was conscious-oriented to make the statement. Those endorsements were given on two separate papers and not on the statements of the deceased said to have been recorded by these two witnesses. Those endorsements were given between the period 9.30 a.m. to 1.30 p.m. on 18/5/2017, on which both the statements were recorded. Admittedly, P.W.4 Dr. Sushilkumar was not present by her side while her both the statements were recorded. He gave vital admission in his cross-examination, wherein he testified that, right from 9.30 a.m. on 18/5/2017 till 1.30 p.m. (during which both the statements were said to have been recorded), he did not know what was the medical condition of patient Sangita. He went on to state that, P.W.2 Eknath had come to him and obtained his endorsement after having been informed to have recorded Sangita's statement. As such, the medical evidence on record indicates that, on the day on which Sangita was admitted to the hospital, she was not conscious-oriented to make a

statement. The Medical Officer on duty was unaware of her mental state to make statement to P.W.2 Eknath and P.W.6 Sk. Munuruddin, still he gave endorsements to both of them certifying her condition to be fit to make statement. The same suggests that, he did not examine Sangita before and after recording of her statements by both these witnesses.

42. It is true that, in view of the Apex Court judgment in case of Laxman (supra) certification of a doctor is not a must if the person who recorded the statement is satisfied that the patient was conscious to make a statement. Both, P.W.2 Eknath and P.W.6 Sk. Munuruddin who recorded her statements have neither stated on oath nor recorded in the statements of Sangita recorded by them that they put certain questions to her to ascertain that she was conscious-oriented to make statement. On the day on which Sangita was admittedly not in mental frame to make a valid statement, her father P.W.5 Bajirao and brother P.W.8 Sanjay claim to have been related by her that the appellant set her ablaze. These two D.Ds., therefore, cannot be relied upon. They are close relations of the deceased. Moreover, they did not report to the police immediately. Their statements were admittedly recorded after the demise of Sangita i.e. 14 days after the alleged incident. To top it, the prosecution witness itself,

namely P.W.1 Rahul testified it to be a case of suicide. In the aforesaid backdrop, the Trial Court ought not to have convicted the appellant. In our view, the prosecution evidence inspire no confidence. At the cost of repetition, it is stated that, the victim was not conscious to make a valid statement on 17. The Medical Officer (P.W.4 Dr. Sushilkumar) gave false endorsement, certifying her to be fit to make a statement on 18. He gave those endorsements without examining the victim. He admitted in cross-examination that, he was unaware about her mental fitness. The evidence of both P.W.2 Eknath and P.W.6 Sk. Munuruddin, who recorded her statements, is silent to state that she was in a mental frame to respond to their queries. Their evidence is silent to suggest they to have ascertained that she was in a mental frame to make a statement. For all these reasons, interference with the impugned order of conviction and consequential sentence is warranted.

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

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order dated 10/11/2021, passed by learned Additional Sessions Judge, Vaijapur, District Aurangabad in Sessions Case No.59/2017 is hereby set aside. The appellant is acquitted of the offence punishable under Sections 302 and 498-A 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/-