



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

**CRIMINAL APPEAL NO. 149 OF 2020
WITH
CRIMINAL APPLICATION NO. 4206 OF 2019**

Ratan s/o Chandu Dhawale
Age: 43 years, Occu: Security Guard,
R/o: Patoda, Tq. Naigaon,
Dist. Nanded at Present ND 116,
Near Tehre Jewellers, Hudco,
Dist. Nanded

... Appellant
[Original Accused]

Versus

The State of Maharashtra
Through Police Station Nanded Gramin,
Nanded, Tq. & Dist. Nanded

... Respondent

...
Mr. Mahesh P. Kale, Advocate for the Appellant
Mrs. V. S. Choudhari, APP for the Respondent - State

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

**Reserved on : 04th April, 2024
Pronounced on : 10th May, 2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This Appeal under Section 374 [2] of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC' for short] is directed against the Judgment and Order dated 11/09/2018, passed by the learned Additional Sessions Judge, Nanded, in Sessions Case No.104/2015, convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC' for short] for causing death of his wife and daughter and sentencing him to suffer imprisonment for life and to pay fine

of Rs.1000/-, in default, to suffer rigorous imprisonment for three months, for each death.

2. The Prosecution's case as revealed from the Police Report is as under:

2.1 The Appellant was married to Gangasagar [hereinafter referred as Deceased Wife] in the year 2003. Out of their wedlock, they had a Daughter - Chaitanya [hereinafter referred as Deceased Daughter]. The Appellant was a drunkard. On 14/04/2015 at around 17:30 hours, the mother of Deceased Wife had come to the Appellant's house. The Appellant objected to her coming at his house regularly. The Appellant had consumed liquor and behaved in abusive manner and so Deceased - Wife's mother left his house. On that count, quarrel took place between the Appellant and Deceased Wife. The Appellant beat her and poured kerosene from the Can which was available in his house on Deceased Wife and Deceased Daughter and set them on fire with a matchstick. Both of them screamed. The neighbourers came on hearing their screams and doused the fire by pouring water. Both the injured were taken to the Hospital where they were treated. Their statements came to be recorded by the Police and the Special Judicial Magistrate. Crime came to be registered against the Appellant for the offence punishable under Sections 307, 323 and 504 of IPC with the Nanded Rural Police Station vide Crime No.95/2015. The spot panchnama came to be drawn. Both the injured succumbed to the burn injuries. Section 302 of IPC came to be added in the said Crime in place of Section 307 of IPC.

2.2 The Investigating Officer performed the Inquest and referred both the dead bodies for Postmortem. The Postmortem came to be conducted on both the dead bodies. The cause of death of the Deceased Wife was '**shock due to burns**' and cause of death of the Deceased Daughter was '**septicemia due to burns**'. The Appellant came to be arrested. The statement of witnesses came to be recorded. The muddemal seized during the course of investigation was referred for chemical analysis. On completion of the investigation, the Appellant came to be Charge-sheeted.

3. On committal, the learned Sessions Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 504 of IPC at Exhibit - 03, to which, the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all eleven [11] witnesses and brought on record the Dying Declarations, Inquests, Postmortem reports, Spot Panchnama, Arrest Panchnama, communications by the Investigating Officer with the Chemical Laboratory, CA reports and Medico Legal [Injury] Certificate of the Appellant etc.

4. After the Prosecution closed its evidence, the Appellant's statement came to be recorded under Section 313[1][b] of Cr.PC. The Appellant denied the Prosecution's case and evidence. According to the Appellant, his Deceased Wife poured kerosene on herself and on her Deceased Daughter and ignited the fire. According to him, Deceased Wife lodged complaint against him and his relatives for the offences punishable under Section 498 [A] of IPC, which was settled on the condition that she will not attempt suicide and

he should stop drinking. The learned Trial Court, after appreciating the evidence on record, passed the impugned Judgment and Order.

5. Heard the learned Advocate for the Appellant and learned APP for Respondent - State. Scrutinized the evidence on record.

6. It is submitted by the learned Advocate for the Appellant that the Dying Declarations cannot be relied as they are the outcome of tutoring. No procedure was followed while recording the Dying Declarations. The Dying Declarations are recorded belatedly and they were the outcome of tutoring. There are inconsistencies in the Dying Declarations. There is no evidence to show that it was the Homicidal Death and the evidence on record show that self-immolation by wife with the girl cannot be ruled out. No independent witness is examined, though the house where the incident took place was such that it was possible for the neighbourers to see what was happening inside the house. In the alternative, he submitted that the incident, if accepted as Homicidal Death, the Dying Declaration show that there was quarrel between the Appellant and his Deceased Wife as his mother-in-law had come to his house. Due to grave and sudden provocation, the Appellant poured kerosene on his wife and set her on fire and in that very event, his Deceased Daughter got burnt. The Appellant tried to save them and he also suffered burn injuries. The Appellant helped them shift to the Hospital. Thus, the offence would be scaled down under Section 304 [Part-II] of IPC as there was no intention to kill. He relied on the Judgments, which would be considered in later part of

this Judgment.

7. It is submitted by the learned APP that the evidence of PW - 9 [Kabirdas Madhav Lohkare] and PW - 10 [Chitralekha Taterao Kamble] show that there was immediate oral Dying Declaration to them by the Deceased Wife. All the Dying Declarations are consistent on material aspects. The evidence on record do not show tutoring. There is evidence of the Doctor, who examined both the injured and certified their fitness to give the statements / Dying Declarations. It is submitted that the conviction can be based on the Dying Declarations and the defence's version that it was the suicide is not acceptable. She relied on the Judgments, which would be considered in later part of this Judgment.

8. Before adverting to the case in hand, the Judgments relied upon by the learned Advocate for the Appellant and learned APP for the Respondent - State are considered.

Judgments cited by the learned Advocate for the Appellant

[i] **Anil Laxman Hichami Vs. State of Maharashtra; 2016 [3] ABR [Cri.] 317**, wherein, as per the statement / Dying Declarations of injured / deceased, the Appellant / Accused called him to his house. Accordingly, he went there, where a dispute arose over some domestic reason. Therefore, in a fit of anger, the Appellant poured kerosene on the victim therein by pushing him outside his house and thereafter set him ablaze. The Court found that the injured was not in a position to disclose anything and in fact, he did not state anything to the witness and therefore, the Dying Declarations were found not reliable. The evidence of Prosecution's witnesses was

discarded in respect of oral Dying Declarations and non examination of the injured by the Doctors before recording the Dying Declarations. The Appeal was allowed and the conviction for the offence of Murder was set aside.

[ii] **Dattatraya Vs. The State of Maharashtra, in Criminal Appeal No.666/2012 delivered by the Hon'ble Supreme Court of India on 01/02/2024**, wherein, the husband, on the fateful night came home in an inebriated state. He picked up fight with his wife while she was cooking food and poured kerosene on her and as the stove burst, the wife suffered 98% burn injuries, to which, she succumbed. Considering the evidence, the Hon'ble Court came to the conclusion that under the given facts and circumstances of the case, it would not be a case of murder but of culpable homicide not amounting to murder. As the act of Appellant therein was not premeditated, but was a result of sudden fight and quarrel in the heat of passion, the conviction was brought down for the offence punishable under Section 304(II) of IPC.

[iii] **Uttam Vs. State of Maharashtra; AIR Online 2022 SC 296**, wherein, benefit of doubt was given to the Accused / Appellant therein as the testimonies of the witnesses were doubted due to diametrically different version of the reasons that led to the incident and Dying Declarations given by the victim at different times were found to be doubtful and she suffered 93% burn injuries and could not have been mentally and physically fit to make statement. It is further observed that it is not necessary that in every case a Dying Declaration ought to be corroborated with material evidence, whether ocular or otherwise. It is rather a rule of prudence that courts seek

validation of the Dying Declaration from attending facts, circumstances, and other evidence brought on record. In cases where multiple Dying Declarations exist, each one of them must be examined with care and caution. Only after satisfying itself as to which of the Dying Declarations appears to be free from suspicious circumstances and has been made voluntarily, should the court accept it. A certificate by the doctor stating that the declarant was fit to make a statement is considered a rule of caution to establish the truthfulness of the deceased's statement. If a Dying Declaration suffers from any infirmity, it cannot be the sole basis for convicting the accused. Under such circumstances, the court must step back and consider whether the cumulative factors in the case make it difficult to rely solely on the said Dying Declaration. A dying declaration recorded by a magistrate, being an uninterested witness and a respected officer, without any circumstances or material to suspect animus against the accused or an interest in fabricating a Dying Declaration, should not be doubted.

[iv] **Irfan Alias Naka Vs. State of Uttar Pradesh; AIR Online 2023 SC 661**, wherein, various earlier decisions of the Hon'ble Apex Court and Privy Counsel were considered and the principles in respect of Dying Declarations have been reiterated and it is observed as follows:

"62 There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

[1] Whether the person making the statement was in expectation of death?

[ii] Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

[iii] Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

[iv] Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

[v] Whether the statement was not recorded properly?

[vi] Whether, the dying declarant had opportunity to clearly observe the incident?

[vii] Whether, the dying declaration has been consistent throughout?

[viii] Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

[ix] Whether, the dying declaration was itself voluntary?

[x] In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

[xi] Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

[63] It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.”

Judgments cited by the learned APP

[i] **Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh; [1993] 2 SCC 684**, wherein, Section 32 of the Evidence Act is considered and it is observed as follows:

“18. Section 32[1] of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not credit-worthy. Under [Section 32](#), when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of

impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same.”

[ii] **The State of UP Vs. Veerpal; AIR online 2022 SC 79**, wherein, the Dying Declarations were found to be reliable and were believed and the order of acquittal was set aside, after considering the law relating to the Dying Declarations in the previous Judgments in the case of *Laxman Vs. State of Maharashtra [AIR 2002 SC 2973]* and *Jabir Singh Vs. State [NCT of Delhi] [AIR 2019 SC 4321]* and other cases.

09. The principles laid down in the above referred Judgments are settled.

10. Now, we advert to the case in hand. As seen from the evidence available on record and particularly, tenor of cross-examination of the witnesses, admitting the Spot Panchnama at Exhibit - 13 and admitting the Inquest of Deceased Wife at Exhibits - 14 / 65 by the Appellant, following are the aspects, which are either admitted or not in dispute:

- [i] Deceased - Gangasagar was the wife of Appellant.
- [ii] Deceased - Chaitanya was the daughter of Appellant.
- [iii] Spot of incident is residential house of Deceased and

Appellant.

[iv] Gangasagar and Chaitanya died of burn injuries.

11. The evidence of PW - 5 [Dr. Santosh Harishchandra Bhosle] show that on 16/04/2015, he was working as the Assistant Professor in the Department of Forensic Medicine, Government Medical College, Nanded. On that day, the dead body of a female aged 27 years [Deceased Wife] was brought for Postmortem. He along with Dr. S. S. Patil performed the Postmortem on the dead body. On external examination, the following injuries were noted in Column No.17 of the Postmortem report:

“1] Superficial to deep burns present over following parts of body with reddening, sooty blackening, peeling of skin at places with formation of blisters over lower limbs at place margins inflamed.

Distribution of burns is as follows:

Area affected	Percentage	Spared
Head, neck & face	5%	Scalp and area around nose and left eye
Upper right limb	9%	Palmer ridges present
Upper left limb	9%	Palmer ridges present
Back	15%	Lower back
Chest and abdomen	15%	Lower part of abdomen and at places
Right lower limb	14%	Foot and front of thigh lower part
Left lower limb	12%	Foot and front of thigh and upper part of leg
Perineum and genitals	00%	Whole
Total	79%	mixed burns

12. His evidence show that there was injury to therapeutic surgical venesection mark over right ankle, medial aspect. All the injuries were antemortem in nature. Injury No.1 in Column No.17 was sufficient to cause death in ordinary course. He opined that the cause of death was “Shock due to burns”. The Postmortem report at Exhibit -

35 is brought on record.

13. His cross-examination show that he was unable to comment whether the burns were suicidal or homicidal or accidental. His evidence show that shock is caused due to loss of body fluids i.e. hypovolenic shock.

14. The evidence of PW - 7 [Dr. Rahul Vasant Jadhav] show that on 21/04/2015, he was working as Post Graduate Student at Shankarrao Chavan Medical College and Hospital, Nanded. He received inquest and requisition to perform Postmortem of the body of Chaitanya [Deceased Daughter]. He and Dr. N. P. Zanzad performed the Postmortem examination and found the following injuries, which were noted in Column No.17 of the Postmortem report at Exhibit - 47.

“1] Superficial to deep burns present over body surface area with peeling, blackening of skin with yellowish green foul smelling pus at places.

2] Therapeutic central venous line present over right side of neck.

3] Blue ink stain present over right thumb.

Area	Percentage	Spared
Head, neck face trunk	5%	upper part of face an scalp
Anterior	18%	
Posterior	18%	
Upper Limb Right	6%	Ventral aspect at places and palm
Left Lower Limb	9%	
Right	6%	
Left	6%	knee below
Genitals	1%	knee below
Total	70%	mixed burns

15. He opined that the cause of death was “**Septicemia due to burns**”. The injuries mentioned in Column No.17 were sufficient to cause death of a person in ordinary

course and they were antemortem.

16. It has come in his cross-examination that, he was unable to opine whether the death was suicidal or accidental or otherwise. He further deposed that in the instant case, it was difficult to opine regarding the nature of death as the deceased was admitted to the Hospital for six days and the injuries may change due to infection or treatment. He denied that his opinion regarding cause of death was incorrect.

17. In view of the above evidence available on record, it is established by the Prosecution that, the Appellant's wife - Gangasagar and Daughter - Chaitanya died of burn injuries suffered in their residential house.

18. The Prosecution's case primarily rests on the Dying Declarations of Deceased - Wife and Deceased Daughter. There are five [5] Dying Declarations brought on record by the Prosecution, out of which, three [3] are of Deceased Daughter and two [2] are of Deceased Wife. Deceased Daughter's two [2] Dying Declarations were recorded by the Police and one [1] was recorded by the Special Judicial Magistrate. Deceased Wife's one [1] Dying Declaration was recorded by the Police and another Dying Declaration was recorded by the Special Judicial Magistrate. The relevant evidence on recording of the Dying Declarations is that of PW - 2 [Dr. Vilas Shantilal Chavan], PW - 3 [Shivaji Mahajan Tondewar], Police Officer, PW - 4 [Ramchandra Tukaram Karpe], Policemen, PW - 6 [Shaikh Hameed Shaikh Hyder], Special Judicial Magistrate and PW - 11 [Parshuram Kishan Marade], Investigating Officer.

19. The evidence of PW - 2 [Dr. Vilas Shantilal Chavan] show that he was attached to the Surgery Department of Dr. Shankarrao Chavan, Government Medical College, Nanded and he was working as Resident Doctor. Patient's named Gangasagar [Deceased Wife] and Chaitanya [Deceased Daughter] were admitted in the said Hospital in burns ward. His evidence show that on 14/04/2015, 16/04/2015 and 20/04/2015, he examined Deceased Daughter before recording her statement and after recording her statement by the Police and Special Judicial Magistrate and at all those times, he found her to be conscious, oriented and mentally fit before recording her statement and during recording her statement. His evidence show that he examined Deceased Wife on 15/04/2015 before and after recording her statement by the Police and Special Judicial Magistrate and at all those times, he found her to be conscious, oriented and mentally fit before recording her statement and during recording her statement. His cross-examination show that Deceased Daughter suffered 74% burns and Deceased Wife suffered 88% burns and both of them were in trauma. Trauma affects orientation of the patient and mental fitness of the patients may be affected in trauma. His cross-examination further show that the pain killer Diclofanec Injections were administered to these patients along with antibiotic. The said drug Diclofanec was administered in order to alleviate the pain mediators in the body.

20. From this medical evidence, it becomes clear that, both the injured were admitted in the Hospital and they

were under going treatment and were in trauma. Though this witness deposed about mental fitness of both the injured, his evidence show that trauma affects orientation of the patients and mental fitness. Thus, from the evidence of this witness, it is seen that, the possibility of affecting the orientation and mental fitness of said two patients at the relevant time cannot be ruled out. The evidence of this Doctor witness leaves room for doubt in respect of mental fitness and orientation of Deceased Wife and Deceased Daughter before and during recording their statements. His evidence does not give the required assurance about the mental fitness and orientation of both the said patients at the relevant time.

21. PW - 3 [Shivaji Mahajan Tondewar] show that he was attached to the Police Station, Nanded Gramin as ASI and on 14/04/2015, he was directed by the Police Inspector [P.I] to record the statement of injured patient Deceased Daughter and he went to SGGS Hospital, Nanded and met PW - 2 [Dr.Vilas Shantilal Chavan] and recorded the statement of Deceased Daughter, which was at Exhibit - 28, as per the say of patient.

22. The evidence of PW - 11 [Parshuram Kishan Marade], who was assigned the investigation of the Crime show that he recorded the statement of patient Deceased Wife as per her say, which was at Exhibit - 64 and recorded the statement of patient Deceased Daughter which was at Exhibit - 66.

23. The evidence of PW - 6 [Shaikh Hameed Shaikh Hyder] show that he was working as Assistant Account and

Audit Officer [Local Fund] Zilla Parishad, Nanded. He was conferred with the powers of Special Judicial Magistrate for a period of one year vide Government Resolution dated 23/09/2014. His evidence show that as per the requisition of PW - 3 [Shivaji Mahajan Tondewar], on 14/04/2015, he recorded the statement of Deceased Wife, which was at Exhibit - 40 as per her say in the Hospital. His further evidence show that as per the requisition of PW - 11 [Parshuram Kishan Marade], he recorded the statement of Deceased Daughter, which was at Exhibit - 43.

24. The first statement / Dying Declaration as is evident from the evidence on record is that of Deceased Daughter, which is dated 14/04/2015. *As per that statement, her grandmother Annapurna had come to their house on 14/04/2015 for going to the procession on account of birth anniversary of Dr. Babasaheb Ambedkar. She and her mother [Deceased Wife] got ready for going to the said procession. Her father [Appellant] was consuming liquor in the house. Her mother asked her father to get ready at the earliest for going to the procession. At that time, the Appellant asked her why her mother was coming to their house every day and whether it was her [Annapurnabai's] father's property and abused. As they expressed that they will not go for the procession, her grandmother left their house. Her father slapped and beat her mother by fist. At that time, her mother said that if he wants to beat her, he should do it. Immediately, her father abused and beat her and poured kerosene on her mother which was in the Can and by pulling her, poured kerosene on her person and*

ignited fire by a matchstick. When they screamed, the Appellant poured water and doused the fire. Due to pouring of kerosene and igniting fire, her clothes got burnt and she suffered burn injuries on her 'chest, back, stomach, neck, both hands, mouth and both the thighs. Her mother also suffered burn injuries on her 'back, stomach, both hands, neck, mouth, chest and both the legs'.

25. In her second supplementary statement / Dying Declaration dated 16/04/2015, Deceased Daughter stated that, *around 5:30 pm on 14/04/2015, her grandmother - Annapurnabai came to their house for accompanying them to the procession on the occasion birth anniversary of Dr. Babasaheb Ambedkar. She and her mother [Deceased Wife] got ready for going to the said procession. Her father was consuming liquor in the house. Her mother asked her father [Appellant] to get ready quickly for going to the procession. On that, her father questioned as to why her mother visits their house every day and whether it was her [Annapurnabai's] father's property and used abusive words. As they said that they will not go for the procession, her grandmother left. Thereafter, her father assaulted her mother by slapping and fists. Her mother said that he can beat her, if you want to. Her father said that he will eliminate her and her daughter and used abusive words and beat her mother. Her father poured kerosene from Can, which was kept in their house on her mother and on her person and ignited fire by using a matchstick. After they came out of their house by screaming, the neighbourers put water on their person and they also got the water poured*

by themselves on their person and the fire was doused. Due to the said fire, her clothes got burnt and she suffered burn injuries on her 'chest, back, stomach, neck, both hands, mouth and both thighs' and due to the fire, her mother suffered burn injuries on her 'whole back, stomach, both hands, neck, mouth, chest and both legs' and she and her mother were admitted to the Government Hospital at Nanded.

The statement further states that, on 16/04/2015, she learnt that her mother expired. Her mother died because her father poured kerosene on her and set her ablaze. Her father poured kerosene on her mother and set her on fire in her presence and killed her.

The statement further states that, it was given with the consent and in the presence of her grandmother - Annapurnabai. According to her, it was true and was read over to her.

26. In her third statement, Deceased Daughter, which was recorded by PW - 6 [Shaikh Hameed Shaikh Hyder], Special Judicial Magistrate on 20/04/2015 is in question - answer form. The relevant questions and answers are as under :-

Question : *How the incident took place? Tell in detail?*

Answer : *14/04/2015 was the Bhim Jayanti. My father quarreled on that day, as my grandmother came to our house. The reason of quarrel with grandmother and mother was not known. During quarrel, my father in anger brought a four liter plastic Can having kerosene and said that he will finish both of us and poured kerosene on my*

mother and on my person and set us on fire by a matchstick. My father was not a human being and was a devil.

Question : Whether they were burnt intentionally ?

Answer : Yes. Father intentionally caused burn to me and my mother. Father's name was Ratan Chandrakant Dhawale. He fights with my mother every day after consuming liquor and used to beat my mother by hands and legs in anger after consuming liquor. He was short-tempered by nature. He tried to kill me and my mother. He should be given severe punishment. While burning, me and my mother jumped in the water tank [पाण्याचा हौद] and doused the fire. My father also tried to douse the fire. His hands got burnt. By an ambulance, we were hospitalized and treatment is going on. I have given the statement after taking oath in the name of God and it is true and correct. The statement was written as per my say and it was true and correct. The statement was written from 10:30 am. to 11:05 am. and it was completely read-over to me. I gave my right hand thumb after it was read-over to me.

27. The first statement of Deceased Wife was dated was 15/04/2015, recorded by PW - 11 [Parshuram Kishan Marade], who was the Investigating Officer. Her said statement, which was at Exhibit - 64, show that she stated as follows:-

Yesterday on 14/04/2015 around 5:00 pm, me and my daughter got ready by wearing new clothes as there was birth anniversary of Dr. Babasaheb Ambedkar. At that time, my husband - Ratanakar [Appellant] came home

from the duty. Before arrival of my husband, I had called my mother for going to the procession. My husband removed two bottles of liquor from his pocket and he consumed one bottle completely and after consuming half of the second bottle started abusing me. By saying, what business my mother was having here and why she comes to our house and he started beating me. Seeing this mother said that she will leave and they should not fight and she left. Even prior to this my husband regularly used to beat me by consuming liquor. After my mother left, my husband got more enraged and said that he will kill me and also my daughter and poured kerosene from the Can, which was kept in the house, on me and my daughter, by saying that he will finish me. My husband set me and my daughter on fire by using a matchstick. As I got fire, me and my daughter came out screaming and people residing on the front side poured water on my person and doused the fire. While setting me on fire my husband's hands also got burnt. However, he did not make any attempt to douse the fire. On hearing screams, our neighbourers came and immediately called my mother. As my mother saw that me and my daughter were burnt, she immediately went down for getting Rickshaw for shifting me to the Hospital and she came home. She was accompanied with Vitthal Sabne, my elder sister - Chitralkh, father and brother - Mahesh. Somebody phoned the Police and Ambulance and I was brought to the Government Hospital, Nanded in the Ambulance and I and my daughter were admitted for treatment.

My above statement was written as per my say. It was

read-over to me. It was true and correct as per my say.

28. The second statement / Dying Declaration of Deceased Wife, which was recorded by PW - 6 [Shaikh Hameed Shaikh Hyder], the Special Judicial Magistrate on 15/04/2015, was in question - answer form. The relevant questions and answers are as under:

Question : *When the incident took place and where it happened?*

Answer : *The incident occurred in husband's house. It happened on 14/04/2015 at 5:00 pm.*

Question : *Who were present at home at the time of incident?*

Answer : *I, my husband and my daughter were present. My daughter witnessed the complete incident and the neighbourers had witnessed the incident with their eyes.*

Question : *How the incident happened? Tell in detail?*

Answer : *Yesterday was the Bhim Jayanti. The food was cooked in the morning. After coming home in the afternoon at 3:30, he started consuming liquor, which was brought a day before and abused me, in the meanwhile, my mother came. On seeing my mother he started quarreling with me and started abusing. Mother asked why fighting as I came and left by saying not to fight. After mother left, I asked why he quarreled after seeing my mother. On seeing this, he beat me with legs and fists. I started weeping. Again he abused and said he will kill me and poured three liters kerosene from the Can of five liters on me and while igniting the fire, our daughter came in between, the*

remaining was poured over daughter and ignited the fire by matchstick and went outside. By seeing that the daughter was burning, he doused the fire by putting water. He did not attempt to douse the fire on me. Polyester saree was on my person which stuck to my body and me and my daughter got burnt.

Question : *Whether husband intentionally caused burns?*

Answer : *Yes. The husband tried to intentionally kill me. I suspect that he was having relations with someone from outside.*

Question : *Who saved you?*

Answer : *The neighbourers saved me by pouring water. He informed the mother, who was present outside. Mother, aunt and son came and they all admitted in the Hospital by Ambulance. Statement was given honestly and it was read-over to me and I read it. I am ready to put my thumb impression of right leg. The statement was true and correct. The statement was started in the afternoon at 03:05 pm and completed in the afternoon at 03:35 pm.*

29. The scrutiny of the above referred statements / Dying Declarations of Deceased Daughter and Deceased Wife show that there are inconsistencies *inter se*. In her first statement / Dying Declaration, Deceased Daughter stated that, after pouring kerosene and igniting fire by the Appellant, they screamed and the Appellant put water over them and doused the fire. In her second statement / Dying Declaration, she stated that, after the Appellant poured kerosene and set them on fire, they screamed and came out

of the house and neighbourers doused the fire by pouring water over them and they also poured the water on themselves. In her third statement / Dying Declaration, she stated that, after the Appellant poured kerosene and set them on fire, they both jumped into the water tank and the Appellant also tried to douse the fire and he burnt his hands. Thus, there are three different versions by deceased daughter in her three statements / Dying Declarations.

30. In her first statement / Dying Declaration the Deceased Wife, she stated that, after the Appellant poured kerosene and set them on fire, they shouted and neighbourers put water over them and doused the fire and the Appellant did not try to douse the fire and while setting them on fire, the Appellant's hands got burnt. In her second statement / Dying Declaration, she stated that, after pouring the kerosene and setting them on fire, the Appellant put the water over the daughter and he did not try to save her and she was suspecting that the Appellant was having extra marital affairs. Here also two different versions are stated by Deceased - Gangasagar in her two statements.

31. True it is that, in all the statements, both the deceased stated about pouring kerosene and setting them on fire by the Appellant, however, on each count, they gave different versions in respect of dousing the fire. It is, thus, clear that the statements / Dying Declarations are inconsistent to each other and therefore, requires corroboration.

32. The Prosecution examined the father and sister of

deceased wife as PW - 9 [Kabirdas Madhav Lohkare] and PW - 10 [Chitralkha Taterao Kamble] respectively. Their evidence show that, they both were the resident of same town and they both reached on the spot of incident in no time, as they got the information that both [Deceased Wife and Deceased Daughter] were burnt. Their evidence show that they shifted both the injured to the Hospital in the Ambulance. According to them, after they reached at the place of incident, they talked with the Deceased Wife and she told that, the Appellant poured kerosene on both of them and set them on fire. Though, the oral Dying Declaration that the Appellant set them on fire was made before them, strangely they did not approach the Police. Secondly, they did not give the history in that respect in the Hospital where both the injured were admitted. Nothing of that sort was done by them.

33. The evidence of PW - 2 [Dr. Vilas Shantilal Chavan] show that while giving evidence he had brought the papers relating to admission and treatment of Deceased Wife and Deceased Daughter. In clear terms, he deposed that the history recorded in the admission papers of both the patients is of burns only and not Homicidal burns. This clearly show that despite oral Dying Declaration by Deceased Wife against the Appellant to these two witnesses who were the father and sister, no such history was given by them at the time of admission in the Hospital. The evidence of PW - 10 [Chitralkha Taterao Kamble] show that she was Graduate and her husband was an Advocate. However, they remained silent despite Deceased Wife gave oral Dying Declaration against the Appellant. Thus, this

leads to an adverse inference that no such oral Dying Declaration was made by Deceased Wife to these two witnesses.

34. It has come in the evidence of PW - 9 [Kabirdas Madhav Lohkare] that while admitting Deceased Wife and Deceased Daughter, he, his wife, daughter - PW - 10 [Chitralkha Taterao Kamble] were together. Further, his show that his wife and his another daughter - PW - 10 [Chitralkha Taterao Kamble] were allowed to be with the patients in the ward. He deposed in clear terms that right from the day of admission to the death of both of them i.e. [Deceased Wife and Deceased Daughter], PW - 10 [Chitralkha Taterao Kamble] was with them. His evidence show that he also visited the Hospital during admission of both of them. Further the evidence of PW - 10 [Chitralkha Taterao Kamble] show that she and her mother accompanied Deceased Daughter and Deceased Wife in the Hospital and she was with Deceased Daughter till her death. In clear terms, she deposed that, she, her mother, her father and maternal aunt - Parbhavati and her husband and their son - Raju met Deceased Wife and Deceased Daughter in the Hospital. Her evidence further show that their relatives kept on visiting and in the meanwhile, the officials recorded statements of Deceased Wife and Deceased Daughter.

35. The above discussed evidence of two witnesses who were the father and sister of Deceased Wife established that they and mother of Deceased Wife were in constant company of both the injured right from their admission to

the Hospital till their death. Suggestion is given by the defence that both the injured were not ready to give statement that the Appellant poured kerosene on them and set them ablaze, however, they made them to give such statement. From this clear evidence on record, the strong possibility of tutoring the injured cannot be ruled out. The supplementary statement / Dying Declaration of Deceased Daughter dated 16/04/2015 show that it was recorded with the consent and in presence of her grandmother. PW - 11 [Parshuram Kishan Marade], the Investigating Officer in his evidence, admitted that the statement of Deceased Daughter, which was at Exhibit - 66 i.e. supplementary statement, was recorded by him in presence of grandmother of Deceased Daughter. This again fortifies the possibility of tutoring the injured. As the evidence clearly established that the statements / Dying Declarations were not free from tutoring, the Prosecution's case about the voluntariness of the aforesaid statement / Dying Declarations, is required to be seen with doubt.

36. There is one more glaring aspect to the case that is, the neighbourers had gathered at the place of incident when they heard screams of the injured, however, none of the neighbourers were examined by the Prosecution. The evidence of PW - 9 [Kabirdas Madhav Lohkare] show that when he and his son - Mahesh and two grandsons reached at the place of incident, the person by name Vitthal Sabne, Parbhavati Sabne, Raju Sabne Tukaram Pabitwar, Rupali Pabitwar and landlord of the Appellant [the owner of the house where the incident had taken place] and the nearby residents from the locality had gathered. His evidence also

show that the people who had gathered there tried to extinguish the fire. The evidence of PW - 10 [Chitralkha Taterao Kamble] also show that on reaching the place of incident, she came to know that, the neighbourers tried to extinguish the fire. Though the neighbourers and residents of nearby locality had reached and gathered at the spot of incident, none of them have been examined by the Prosecution. Those were the persons who had reached earlier in point of time at the place of incident. The evidence of PW - 11 [Parshuram Kishan Marade] show that he recorded the statements of witnesses, who were residing in eastern and southern side of the house of Deceased Wife. He also recorded the statements of Jaiprakash Vishwakarma and Sevan Jaiprakash Vishwakarma, as they were residing in front of the house of place of the incident and everything was visible from their house and they extinguished the fire. This aspect further creates shadow of doubt in respect of the Prosecution's case.

37. One another aspect to the case is that, the statements / Dying Declarations, which are considered above, show that mother of Deceased Wife had come to the house of Appellant shortly before the incident. This is also admitted by PW - 9 [Kabirdas Madhav Lohkare] that his wife Annapurnabai had been to the house of his Daughter Wife prior to the incident. In his evidence PW - 11 [Parshuram Kishan Marade] deposed that Annapurnabai [the mother of Deceased - Wife] was a star witness of the case and she was having knowledge of most of the facts of the case. His evidence also show that he recorded the statement of Annapurnabai in connection with the matter.

Admittedly, Annapurnabai is not examined by the Prosecution. True it is that, in the evidence of PW - 9 [Kabirdas Madhav Lohkare], who is the father of Deceased Wife, he deposed that his wife, [Annapurnabai] suffered Paralytic Stroke prior to six (6) months, in which, her left leg and left hand were affected and she received the treatment in the Government Hospital, to which, she responded. However, he deposed that she could talk, see and hear though she was unable to move from one place to another on her own. From this, it becomes clear that it was possible for the Prosecution to examine Annapurnabai. This also leads to an adverse inference.

38. It is the Appellant's case as seen from the tenor of cross-examination that his deceased wife committed suicide and also set their Deceased Daughter on fire by pouring kerosene on her. The evidence of PW - 9 [Kabirdas Madhav Lohkare] who is none other but the father of Deceased Wife show that his Deceased Daughter had filed criminal case against the Appellant for the offences punishable under Section 498[A] of IPC and he wanted to continue the marital tie with the Appellant and he tried to settle the matter between them. Though he denied the suggestion that his Daughter attempted to commit suicide by consuming rat poison, he admitted in his cross-examination that the said case under Section 498 [A] of IPC was settled on certain conditions. He accepted that his Daughter assured that she will not attempt to commit suicide and the Appellant assured not to consume liquor. He admitted that Deceased Wife remained pregnant for two(2) times after the birth of Deceased - Daughter and on

both the occasions, her fetus was aborted prematurely. The evidence of PW - 10 [Chitralekha Taterao Kamble] who is the sister of Deceased Wife show that the Appellant was addicted to liquor and her sister Deceased Wife wanted that the Appellant should quit consuming liquor. She admitted that as the Appellant did not quit liquor, the dream of her sister Deceased Wife was shattered. Though she deposed that there was no reason for her sister to commit suicide, she deposed that her sister wanted that the Appellant should behave properly. From this evidence on record, it is seen that once Deceased Wife attempted suicide.

39. There is evidence on record to show that the Appellant suffered 20% Superficial to Deep Burns over face and bilateral/upper limbs and he was hospitalized and treated by General Surgeon. The Medico Legal [Injury] Certificate of the Appellant issued by the Medical Officer, SGGS Hospital, Nanded is at Exhibit - 70. This aspect is also established from the evidence of PW - 11 [Parshuram Kishan Marade] who was the Investigating Officer, wherein, he deposed that the Appellant was admitted to the same Hospital as he had burn injuries on his hand and he was discharged on 17/05/2015. Even PW - 9 [Kabirdas Madhav Lohkare] in his evidence deposed that he saw that the Appellant - Ratan had suffered injuries to his fingers and the Appellant was admitted in the Hospital in his presence. This evidence on record has firmly established that the Appellant also suffered burn injuries in the said incident.

40. The above discussed evidence on record do not lead to firmly establish the Charge against the Appellant. The

multiple Dying Declarations cannot by themselves form the basis to hold that the Charge is proved for the reason of inconsistencies therein and presence of close relatives of Deceased Wife from her maternal side throughout in the Hospital posing strong possibility of tutoring both the Deceased. This further lends the Prosecution's case about voluntariness of statements of injured / Dying Declarations coupled with the medical evidence that the injured were in Trauma, in shadow of doubt. The other glaring aspects are, not giving the history of Homicidal burns to the Hospital by the witnesses who admitted the injured to the Hospital and not reporting the incident to the Police though oral Dying Declarations were made by Deceased - Wife to them, non-examination of the witnesses who had the opportunity to see both the Deceased in an injured condition and those who went for help. These aspects make us to view the case of Prosecution with doubt. Further, the clear evidence indicating prior attempt of suicide by Deceased Wife, her two premature abortions and shattering of her hopes / dreams and suffering of burn injuries by the Appellant makes the defence version.

41. Applying the principles in relation to Dying Declarations laid down in the Judgments considered above, to the case in hand, in our considered view, it is not possible to maintain the conviction and sentence recorded by the learned Trial Court against the Appellant. It is needless to state that, it is settled position under the law that, in criminal case when two views are possible, the one which lean or favor the accused is to be adopted. The other evidence in the nature of CA reports showing the residues

of kerosene on the articles collected during the course of investigation would not by itself sufficient for the Prosecution in establishing the Charge. Though the Charge framed against the Appellant was for the offence punishable under Sections 302 and 504 of IPC, there is no reference of Section 504 of IPC in the operative order of the impugned Judgment. Hence, we proceed to pass the following order:

ORDER

[i] Criminal Appeal is allowed.

[ii] The Judgment and Order dated 11/09/2018, passed by the learned Additional Sessions Judge, Nanded, in Sessions Case No.104/2015 convicting and sentencing the Appellant for the offence punishable under Sections 302 and 504 of IPC, is quashed and set aside.

[iii] The Appellant stands acquitted for the offence punishable under Sections 302 and 504 of IPC.

[iv] The Appellant be released, if not required in any other case.

[v] The fine amount, if deposited by the Appellant, be refunded to him.

[vi] The Record and Proceedings be sent back to the learned Trial Court.

[vii] The muddemal be dealt with in accordance with law.

42. Criminal Appeal is disposed of accordingly.

43. In view of disposal of Criminal Appeal, Criminal Application also stands disposed of.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]