

He was also charged for committing offence under Section 504 and 506 of the IPC.

In the subject FIR, the mother of the Appellant Rajendra Kamble was also arraigned as accused No.2, but in wake of her demise, the proceedings were abated and only the two accused faced the trial.

2] The Additional Sessions Judge, Kolhapur tried the two accused in Sessions Case No.89/2010 and found Accused No.1 guilty of an offence punishable under Section 302, 498A and 506 of the IPC and acquitted the Accused No.3 of all the offences with which she was charged.

On being convicted for committing offence under Section 302, he is sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- in default, to suffer rigorous Imprisonment for six months. On recording finding of guilt for committing offence punishable under Section 498A as well as 506 and 504 of the IPC, distinct sentences were imposed upon him; all the sentences being directed to run concurrently.

3] The finding of conviction against the Appellant Rajendra is based on the evidence lead by the prosecution through 11 witnesses, which included her mother Anandi Kamble (PW 1), maternal uncle Shankar Bagade (PW 2), neighbour Kumar Sarate (PW 3) and Yogesh Kamble, another relative (PW 4).

In addition, the Panch witness Prakash Oghade came to be examined as PW 5, whereas Dr.Manjushri Pardeshi and Dr.Sandesh Bagadi, were examined as PW 6 and PW 9, respectively.

The Investigating Officers who carried out investigation, were examined as PW 7 and PW 10. In addition, the Magistrate who

recorded the Dying Declaration of the deceased is examined as PW 11.

4] Through the relatives of deceased Archana, the prosecution has brought on record that she was married to Rajendra prior to 14-15 years and though she received good treatment for a little while, but since he was addicted to liquor, he indulged in abusing and assaulting her. The deceased Archana was working as maid servant and also worked in a hotel and at times she used to return home at late hours.

The close relations of Archana have categorically deposed about ill-treatment meted out to her, which was narrated to her whenever she used to visit her paternal home. At times, her husband was made to understand the consequences of his act, but he did not change his behaviour.

5] As per PW 1, the mother of Archana, 5 years prior to her deposition, her daughter suddenly came to her house by auto-rickshaw wrapped in a cotton blanket (bed-sheet) and she noticed her burned hair and face.

When her mother inquired, she narrated that last night her husband had thrashed her and after giving dinner to him she went to sleep, but he was murmuring throughout the night. In the morning at 7.00 a.m. her husband went out of the house and returned back after some time and again abused her. He sprinkled kerosene on her while she was cooking food and set her ablaze by lighting piece of paper on the gas burner and thereafter he ran away. Thereafter, she wrapped herself in the blanket and came to her mothers house by taking an auto rickshaw. In the same rickshaw, PW 1 took her to Dr.Walawalkar, where she received treatment.

As far as ill-treatment at the hands of the accused to the deceased is concerned, there are other prosecution witnesses who have deposed to that effect.

6] On being admitted in a private hospital, Archana received treatment and police was informed about the incident. The police reached the hospital at about 1.00 p.m. and recorded her statement. Her Dying Declaration was also recorded by the Judicial Magistrate First Class at Kolhapur. The investigating machinery was set rolling and spot panchanama was drawn, where kerosene can and pieces of burnt match-stick were seized. The accused was arrested on 03.04.2010.

The deceased was discharged from the hospital on 24.05.2010 and continued to stay at her paternal house. On 17.06.2010 she passed away and it was opined by the Medical Officer that the death was caused due to superficial to deep burns of 63%.

Upon death of Archana, the subject FIR was registered accusing the present Appellant of committing an offence punishable under Section 302 read with 34 of the IPC and Section 498A of IPC.

7] Ms.Jai Kanade, the learned counsel representing the Appellant, on being represented through Legal Services Authority has invited our attention to the inconsistencies in the prosecution case and she has urged before us that the material inconsistencies, which have surfaced on record, have made the prosecution case doubtful. According to her, the circumstance that Archana had sustained 62% burn injuries is not proved by the prosecution as in the letter issued by PW 6 (Exh.79), the percentage of burns is an over-writing and the said witness who was working as Medical Officer in Dr.Walawalkar Hospital, when Archana

was brought in burnt condition, deposed that she was conscious and able to speak and she informed Rajawadi Police Station about her admission.

According to Ms.Kanade, the PW 6 is completely unreliable as in the crosse-examination, she feigned ignorance as to whether hands and palms of Archana were burnt or not, though she deny the suggestion that when the patient came at the Hospital, she was not conscious. In addition, according to Ms.Kanade, one Dr. Manjiri Patil was also present alongwith PW 6 at the hospital and she had also scribed on Exhibit 79, that the patient is in a fit condition to give her statement, but she has not been examined by the prosecution. In addition, referring to the inconsistency in the two Dying Declaration recorded, Ms. Kanade would submit that, though a Dying Declaration is accepted as an exception to hearsay evidence, it must necessarily inspire confidence.

By inviting our attention to the evidence of PW 8 Dr.Soniya Kadam, who opined the patient to be conscious oriented and pursuant to which the Magistrate had recorded the Dying Declaration of Archana, the timings of recording statement do not corroborate with the version of PW 8 and, therefore, according to the learned counsel, the dying declaration cannot be relied upon.

Moreover, the inconsistency in the version of the deceased is highlighted by Ms.Kanade. Further, PW 9, who conducted the postmortem and opined that there were 63% burn, and according to her in cross-examination, it is admitted that if a person pour kerosene on another person and sets fire, there is possibility of having burn injuries to the person who poured the kerosene and this witness has admitted that the patient died after two months of sustaining burn injuries, as she had not taken treatment during the said period.

According to Ms. Kanade, the conduct of Archana in travelling to her mother's place by an auto-rickshaw despite having sustained 62% burn injuries and her death after a period of about two and half months, makes the prosecution case extremely doubtful. She has placed reliance upon the relevant extract from Mody's Textbook of Medical Jurisprudence and Toxicology, where the burns are classified and he has also analysed the delayed causes of death, posed against the immediate causes of death. As per Mody, the immediate cause of death may be shock, suffocation or grievous injuries, whereas the delayed cause of death may be inflammation, hypoproteinaemia, exhaustion, lardaceous disease, and such other causes which are specified. Mody has also opined that death may occur within 24 to 48 hours, but usually the first week is most fatal and in suppurative cases, death may occur after 5-6 weeks or even longer.

Ms. Kanade has also placed reliance upon a series of Judgments which include the following decisions :

- 1) Mohan Lal & Others vs. State of Haryana, (2007) 9 SCC 151
- 2) Mesu Dhondiba Vidhate vs. State of Maharashtra, (2001) 10 SCC 63
- 3) Veera Singh vs. State of Punjab, 1958 SCR 1495
- 4) M.B. Suresh vs. State of Karnataka (2014) 4 SCC 31
- 5) Vithal Sadashiv Gaikwad vs. State of Maharashtra, 1994 CriLJ 2035
- 6) Maniben vs. State of Gujarat, (2009) 8 SCC 796
- 7) Moti Singh and Anr. vs. State of Uttar Pradesh, AIR 1964 SC 900
- 8) Tomaso Bruno and Anr. vs. State of Uttar Pradesh, (2015) 7 SCC 178

8] We have heard the learned APP Mr. Yaganik for the State, who has supported the impugned Judgment as its foundation lies in the evidence which was lead before the trial Court.

The learned APP Mr. Yagnik has contested the argument of Ms. Kanade about the truthfulness of the Dying Declaration as he would submit that the deceased did not implicate her other relatives, as she candidly stated that her mother in law and sister in law were not

present when her husband set her on fire, though she was harassed even by them.

Further, it is the submission of Mr. Yagnik that the inconsistency in the timing, which is sought to be projected by Ms.Kanade do not discredit the substratum of the statement of the deceased and according to him the two Dying Declarations that are recorded , one by PW 7 (Exh.81) and another recorded by the Magistrate (Exh.98) have consistently narrated that the accused is guilty of setting her on fire as a result of which she sustained burn injuries and the burn injuries were responsible for causing her death.

9] We have perused the record and proceedings, placed before us which include the deposition of witnesses examined by the prosecution to prove its case alongwith necessary documents, brought on record.

We have also perused the impugned Judgment which is assailed before us.

The alleged incident took place on 02.04.2010 between 7.00 to 8.30 a.m., while the victim was cooking food in her home. It is the case of the prosecution that Rajendra, the Appellant, suspecting her character raised a quarrel with her the previous night and as a sequel to the same, he set her on fire by sprinkling kerosene on her body by throwing burning paper which he lit from the gas stove and fled away. Archana, the victim wrapped herself in a blanket so as to extinguish the fire, locked the door of the house, hired an auto rickshaw and reached her mother's place, where she narrated the incident. Her family members admitted her to a private hospital at around 11.30 a.m. 12.30 p.m., the timing recorded as per receipt of MLC by the Police Station (Exh.79). At 1.00 p.m. the police personnel from Rajawadi Police Station reached the hospital. At around 3.00 p.m. after

recording the statement of Archana on ascertaining her capability to give statement,(Exh.81), the police personnel returned to the Police Station and at 6.00 p.m. registered the FIR.

In addition, a dying declaration is recorded by the Magistrate (PW 11) and according to him it was in presence of PW 8 the Medical Officer at Dr. Walawalkar Hospital and this was recorded between 5.45 to 6.45 p.m. (Exh.98).

10] The prosecution has relied upon the evidence to prove the accusations under Section 498A and PW 1, her mother, PW 2, uncle of deceased, PW 4 maternal cousin of deceased, were examined in support of this charge.

All the aforesaid witnesses in sync have deposed that she was ill-treated by Rajendra, her husband alongwith other two accused persons and on several occasions attempts were made to pacify him though no complaint regarding ill-treatment was ever lodged by the deceased. As per PW 1, when her daughter came to her house in burnt condition by an auto rickshaw, she revealed to her the cause for her injuries. This information was transmitted to PW 2 and PW 4. PW 4 has also deposed about the extra judicial confession made to him by Archana, but in the cross-examination, he has admitted that there was no dispute between the deceased and her mother in law and husband and he had visited them on 2-3 occasions, however, later on Archana and her husband started residing at Timber Market. The ill-treatment meted out to Archana was disclosed to him by her is an omission and so is the statement that her husband had thrashed beat her on the previous night.

This witness has also admitted that there was no need for Archana to remain in hospital and therefore she was brought home and

when he visited her at her mother's place, she used to wear gown and was not kept in the dome. He has also admitted that Archana was in a position to sit but required help of others.

At this stage, it is also necessary to take note of the evidence of PW 3 owner of a Pan kiosk in the neighbourhood of the house of the accused and deceased. He has deposed that the accused would drink liquor in the night and quarrel with the deceased by suspecting her character and even her mother in law and sister in law used to have quarrel with her.

Deposing about 02.04.2010 he has stated that when he opened the shop at 7.30 to 8.00 a.m. in the morning, he saw the deceased coming out of her house wearing a chadar and she was in burned condition and the accused and other people were running after her. PW 3 deposed that he came to know from the daughter of the house owner that the accused had set her on fire, but in cross-examination he admit that he did not witness any quarrel between husband and wife on the earlier night nor did he hear any shouts prior to the deceased came out of the house wrapped in a blanket.

11] In order to establish the charge under Section 302, the prosecution has relied upon the two Dying Declarations, given by Archana when she was admitted in the hospital.

After being admitted in a private hospital, PW 7 serving at Juna Rajwada Police Station, on receipt of letter from the hospital, PSO approached the hospital to record her statement in an offence registered vide CR No.57/2010.

PW 7 testified that he was asked by the PSO to visit the hospital and to record the statement of the patient admitted in Dr. Walawalkar Hospital as per the MLC. Thereafter, he met the lady Medical Officer

and verified whether, the patient was in a state to give statement though it was already mentioned in the MLC. Admittedly, PW 7 did not give name of the Medical Officer, but proceeded to state that he recorded the statement as per her say and obtained the signature of the patient, though the signature of the doctor was not taken. Exhibit 81 is the said document which is exhibited at his instance.

In the cross-examination, he admit that the MLC was received at around 12.20 noon and he went to the hospital at 1.00 noon and he was there for about one and half hour. This witness did not remember whether dome covered the body of the patient and was unable to state whether the hands of the patient were burnt, but noticed marks of burn injuries on her body.

12] Exhibit 81 record the version of Archana that a quibble occurred between the couple and he picked up a kerosene can and sprinkled it on her and before she could realise, he set her on fire by lighting a piece of paper on the stove and she started screaming, but her husband fled away.

Archana further stated that while she was burning, she pulled a bed sheet from the house, dozed the fire and then locked the door and by hiring an auto rickshaw went to her mother's place and her family members admitted her at Dr. Walwalkar Hospital in Kolhapur, where she was undergoing treatment.

The statement bear the signature of Archana and also signature of PW 7 and this complaint was forwarded to the Police Station.

13] In connection with Exhibit 81 we have also looked into the evidence of PW 6 Medical Officer of Dr. Walawalkar Hospital, who has forwarded MLC to Juna Rajwada Police Station informing about the

admission of the patient at 9.00 p.m. and for further action. Exhibit 79, bear the signature of Dr.Pardeshi, but it is also signed by Dr. Manjiri Patil, who is not examined as a witness. The percentage of burns i.e. 62% in the said document is found to be over written and when the deposition of PW 6 is perused, she has stated that Manjiri Patil had also scribed on Exh.79, that the patient is in a position to give statement.

According to PW 6 the patient did not state anything before her and she was admitted in the hospital for about one month, but she could not produce the treatment papers, as they were unavailable in the hospital.

In the cross-examination, she admit that the patient was brought to the hospital at around 10.00 to 10.30 a.m., whereas, in Exh.79, MLC, it is informed that the patient was admitted at 9.00 a.m.

Further, PW 6 admit that though the hospital maintained, Inward and Outward Register, Exh.79, do not bear any outward number. When specifically asked whether she was authorized to give endorsement as to whether patient is in a state to give statement, she has responded by stating that we make endorsement in respect of the patient in consultation with the Consultant.

Her admissions in the cross-examination, deserve reproduction as below :-

"I did not make the endorsement on Ex.79 and it might be remained by me. It is not true to say that endorsement made by Dr.Manjiri Patil was made in my absence. I do not know whether hands and palm were burnt or not. I did not bring the papers of treatment of the patient. I tried to trace out them but did not get. I did not give letter to medical department for letter getting the papers of the treatment. It is not true to say that when the patient came at the hospital, she was not conscious. It is not true to say that Ex.79 was prepared afterwards on the say of the police."

14] From the cumulative reading of the evidence of PW 6 and PW 7 with reference to Exh.81, it is noted by us that there is no endorsement on the statement that the patient was in a fit state of mind to record the statement and PW 7 has assumed the fitness since it was indicated in the MLC.

The MLC (Exh.79) record the timing of admission of the patient as 9.00 a.m. and the intimation is received by Police Inspector at 12.20 p.m. as Exh.79 has an endorsement to that effect from the PSO.

As per PW7, he reached the hospital at around 1.00 noon and recorded the statement thereafter.

15] The aforesaid evidence brought on record by the prosecution, however, do not prove that at the time when the statement of Archana was recorded i.e. after 1.00 p.m., whether she was in a fit state of mind to give the statement and this makes the statement doubtful as there is no endorsement on Exh.81 about the patient being in a position to give statement and much time has lapsed since the MLC was signed when the patient was admitted and till the time when the actual statement was recorded.

16] We, shall, now turn to the second dying declaration, which is recorded by the Magistrate, Nitin Jadhav (PW 11). It is through him, the Dying Declaration is exhibited alongwith a certificate issued by PW 8 certifying that the patient Archana was fully conscious and competent to answer the queries. The certificate is signed at 6.45 p.m.

The Magistrate recorded the Dying Declaration of Archana in question and answer form and on being queried as to how she sustained burns, she replied that her husband Rajendra had set her on fire. When asked as to how she was set on fire, she answered that he

poured kerosene and had set her ablaze by means of a paper by lighting it on the gas and the cause for such act was given by her, that he was suspecting her character.

17] We have carefully gone through the deposition of PW 11, who has deposed that, when he went into the burn ward of Walawalkar Hospital, the relatives of the patient were with her and he called the lady doctor Smt.Kadam. His deposition reads thus :-

“The patient was found admitted at burns ward. The relatives of the patient were with her. I called the lady doctor Smt.Kadam. She examined the patient and put some questions to the patient and accordingly she wrote down on the paper that patient was conscious and was in a position to give statement. I also asked few questions to the patient and on the basis of it, I found that patient is in a position to give the statement. The relatives were sent out after arrival of the doctor. Thereafter, I asked questions to the said patient and wrote down the questions and answers on the said paper in the question and answer form in the handwriting of the constable. The constable wrote down the questions asked by me and the answers given by the patient. It was recorded in my presence. I read over same to the patient and patient admitted the contents i.e. answers to be correct. Thereafter patient put her signature at the end of the said paper. I also signed on the said paper. The said statement on record now shown to me is the same. It is given Ex.98.”

In cross-examination, PW 11 admit that he did not call a particular doctor who was treating the patient and he also did not remember whether he asked the doctor to check the patient in his presence. Further, he admit that he did not write down the questions and answers which were asked by him to the patient about her condition and consciousness and also did not obtain endorsement of the doctor at the end of the statement about the consciousness of the patient. In addition he has also admitted as below :-

“I did not think it necessary to remove the constable from the ward before recording the statement, as I wanted to record the statement in the handwriting of the constable as my handwriting is not fair. I know that while recording the statement or confession, there should be no other person near the patient except the doctor.

It is correct to say that in the statement/dying declaration (Ex.98) it is not mentioned that it was recorded in the handwriting of the constable as stated by me."

18] When the testimony of PW 11 is looked into in by juxtaposing it with the testimony of PW 8 Dr. Soniya Kadam, the inconsistency in the case of the prosecution is clearly evident.

PW 8 has depose that the Magistrate Mr.Jadhav came to the hospital and inquired whether the patient was in a position to give statement. She examined the patient and wrote down on the paper that the patient was conscious oriented and signed it. She also admit that 3-4 persons were with the patient, but they were asked to go out, but she remained present there when the Magistrate recorded the statement and obtained her signature on the same. Even he signed the paper in her presence as per PW 8.

In cross-examination Dr.Soniya admit that before examination of the patient, she posed questions to her, but did not note down the questions and thus she did not follow the norms for ascertaining whether the patient was conscious or not.

The most significant part of her deposition is, her version that she was called by the Magistrate at about 5.45 p.m. and she came out of the room of the patient at about 6.45 p.m. and her specific admission is that she was not called by the Magistrate again after 6.45 p.m.

This statement assume relevance, since the recording of the Dying Declaration according to Exh.98 is between 6.50 to 7.50 p.m. as at the end of the Dying Declaration, it is so recorded by the JMFC himself. Dr.Soniya has deposed that throughout the recording of the Dying Declaration she was present, but in the cross-examination she admit that she came out of the room of the patient at around 6.45 p.m., leading to an inference that she was not present when the Dying

Declaration was recorded by the Magistrate, which commenced at 6.50 p.m. and concluded at 7.50 p.m.

19] From the aforesaid, it is thus clear that both these Dying Declarations i.e. Exh.81 recorded by PW 7 and Ex.98 recorded by PW 11 suffer from material inconsistencies, as it fail to adhere to the required norms for recording of the Dying Declarations being, that it should be recorded only upon being declared that the patient is in a fit condition and this declaration must come from the doctor after the medical examination of the patient.

In addition, when the Magistrate recorded the Dying Declaration, the Constable was present and in fact he has scribed the Dying Declaration and thus the requirement in law that no person other than the patient, the doctor and the Magistrate, should be present while the Dying Declaration is recorded and therefore, there is a clear breach of the protocol when the Dying Declaration was recorded.

20] Another important facet which deserve consideration before us is the death of Archana on 17.06.2010, whereas the incident of setting her on fire by the accused occurred on 02.04.2010. It has also come on record that she was discharged from the hospital on 24.05.2010, but the doctor who conducted the postmortem i.e. PW 9 has opined her death on account of shock due to superficial to deep burns of 63%.

As per the Medical Jurisprudence, burns can be attributed on account of various causes including flame due to actual contact with the body, scalding due to contact with hot liquids, contact of physical body with an hot object etc.

Mody has classified burns according to the degrees and nature of their severity and as per the modern classification (HEBA) there are three degrees by grouping the first and second (epidermal), third and

fourth (dermo-epidermal), and fifth and sixth (deep) degrees together.

Another classification grades burns into superficial and deep burns. The deep burns are burns of 5th and 6th degree which include penetration of deep fascia and implications of the muscles which result in scarring and deformity. The sixth degree burns involve charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. Epidermal burns are the burns of first or second degree consisting of erythema or simple redness of the skin caused by momentary application of flame or hot solids or liquids much below boiling point. It would also cover the second degree burns, which comprise of acute inflammation and blisters produced by prolonged application of flame, liquids at boiling point or solids above the boiling point of water.

As per medical jurisprudence, superficial burns, which are the first degree burns involve the epidermis and may heal without scarring within 5 to 10 days and it may also cover the second degree burns involving epidermis and part of the dermis layer of skin. The superficial burns are capable of being managed by maintaining clean and moist wound healing environment and protecting the wound from shear, tearing and injury. The causes of death in burn injuries are again classified by Mody as shock, suffocation or grievous injuries.

“Shock” in specific, which is one of the immediate cause of death according to Mody is accompanied with severe pain and mark protein rich fluid loss from extensive burns which result into increased capillary permeability, causing shock and producing a feeble pulse, pale and cold skin and hypotension resulting in death instantaneously, or within 24 hours to 48 hours.

21] Shock may also occur from fright, before the individual is

affected by the burns, if his heart is weak or diseased. Further, if death does not occur from shock according to Mody, it may subsequently occur from toxaemia, due to the absorption of toxic products from the injured tissues in the burned area. In this condition, the temperature rises to 104 F, the pulse rate increases which is coupled with restlessness supervenes and passes into unconsciousness and death, due to delayed shock.

There may be several reasons why there is delayed death and these factors have been identified by Mody to be inflammation of serous membranes and internal organs, Hypoproteinaemia marked by fluid loss, renal failure and anaemia. In addition, exhaustion from suppurative discharges lasting for weeks or months can also cause death belatedly on sustaining burn injuries. Further, as per Mody's Medical Jurisprudence death may occur within 24 to 48 hours, but usually the first week is the most fatal and in suppurative cases, death may occur after five or six weeks or even longer.

22] On examining the evidence of PW 9, who has assigned the cause of death, as shock due to superficial to deep burns, we do not find any explanation offered as to how the death could be on account of shock when it occur after a gap of more than two months after the deceased sustained burn injuries. Therefore, the possibility and probability of death due to medical complications, cannot be ruled out.

Archana was discharged on 24.05.2010 and her death had occurred on 17.06.2010 and as PW 4 has deposed that the Doctor had stated that there was no need for the deceased to stay in the hospital, she was shifted home and she was not kept in any protected atmosphere and since she was wearing gown according to this witness, her burn injuries are presumed to have been healed.

Since the death of Archana did not occur immediately within 24 to 48 hours as contemplated by Mody, which is the fatal period, but it is difficult to assume that after more than two months, the victim died of shock.

23] Another aspect which we must take note of is, the principle laid down by the apex Court in case of ***Paniben (Smt) vs. State of Gujarat***¹, where the Supreme Court had an occasion to consider the peculiar situation, which according to us deserve due consideration as it is found in most of the cases and also in the present case being on marital discord between the husband and wife on various grounds, like the accusations against fidelity, where the deceased-wife has been the victim of harassment and torture and character assassination over a period of time and in this case, the principal "*Nemo Moriturus proesumitur e mentiri*" that it is an exception to an hearsay evidence because normally a person on death bed would not tell a lie. But the Supreme Court deemed it appropriate to test such statement with caution and we must reproduce the following observations :-

"17. The situation in which a man on death bed is so solemn and serene when he is dying the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

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 cor-

¹ (1992) 2 SCC 474

roboration. 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."

24] Relying upon the said decision, the Bombay High Court in ***Vithal Sadashiv Gaikwad vs. State of Maharashtra***², has observed thus :-

"15. In Paniben's, case the Supreme Court had occasion to consider the law with regard to dying declarations threadbare. The Supreme Court however did not have occasion to consider one more aspect that needs to be taken very serious note of particularly in cases of the present type. Where there is a background of unhappiness, marital discord, violence, accusations against fidelity and the like and where it is highly suggestive of the fact that the deceased wife has been the victim of harassment torture, and character assassination over a period of time and consequently can never be favourably disposed towards the husband, the Court would have to put itself on guard. In such cases the principle "Nemo moriturus proesumitur ementiri" the principle which governs the credibility that is attributed to dying declarations, namely that a dying person would not normally tell a lie, does require serious examination. Having regard to the mental disposition of the victim one cannot rule out the possibility on the part of some persons to implicate, purely out of a sense of vendetta, the husband who has been responsible for prolonged and protracted illtreatment. Cases are quite common where the wife is virtually pushed to a position of utter desperation and which results in an attempted suicide and at a later point of time when questions are put one cannot completely eliminate the possibility of false implication, if the background has been extremely hostile, and the victim feels guilty of having attempted the suicide. That aspect therefore does require serious examination. Conversely, it would certainly appear correct that if, over a period of time, statements made to different persons both oral and in writing consistently set out the same version and if that version does find support from the evidence of other witnesses also, then a Court could safely act on what is contained in the dying declarations, as in the present case. Having examined the position in law very carefully and having applied the well settled principles that have emerged through various decisions to the material that is before us, we have no hesitation whatsoever in holding that the prosecution has established the charge of murder. The findings of the learned trial Judge therefore do not require any interference with. The conviction of the appellant for the offence under section 302 of the I.P.C. stands confirmed, and so does the sentence awarded to him by the trial Court."

25] On appreciating the evidence placed before the learned Judge, who has failed to take note of the discrepancies and lacunas in the case of prosecution and particularly, the well established principle of criminal law that unless and until the prosecution prove the guilt of the accused beyond reasonable doubt, the conviction cannot be sustained.

2 1994 CriLJ 2035

The conviction of an accused undisputedly can be based upon the Dying Declaration, since the statement is made by a person who is conscious and believes or apprehends that death is eminent and this is a statement given, about his or her cause of death or the circumstances of death and it is an exception to the rule of hearsay evidence. However, the statement should inspire confidence and it should be truthful and creditable and not prompted by any motive or vengeance.

In the present case, the case of the prosecution suffers from inconsistencies and when the Dying Declarations recorded on two occasions, have failed to conclusively prove the prosecution case as it has failed to establish that she was in a fit state of mind when the statement was recorded, as on both the occasions, the Doctors have failed to meet the standards, of making such a declaration.

Dr. Patil, who signed the MLC is not examined as a witness and the testimony of PW 6 is full of uncertainty. As far as the Dying Declaration in form of Exh. 98 is concerned, PW 8 who certified the fitness of the patient, but the recording of this statement appear to be doubtful.

When the prosecution has failed to prove the certification from the Doctor about the conscious state of mind of the deceased and that she was in a position to give a statement, the evidence in form of dying Declarations is not worth consideration.

A Dying Declaration which suffer from infirmity cannot form the basis of conviction.

With the prosecution case suffering from the above doubts, the benefit must necessarily accrue in favour of the accused.

The learned Trial Judge, has, however, missed the aforesaid aspect on appreciating the evidence placed before him and rendered a

finding of conviction. It is not the case of the prosecution that any one has seen the accused setting the deceased on fire and the fact that with the burn injuries she managed to wrap her in a blanket, locked her house, hired an auto rickshaw and reached her mother's place, speaks for itself. The prosecution has not proved with certainty she had sustained 62% of burn injuries, which were sufficient to cause her death, and, therefore, accused No.1 Rajendra was responsible for her death. As a result, his conviction for the offence under Section 302 of the IPC cannot sustain and upon it being set aside even the sentence imposed upon him is liable to be set aside.

As far as finding of conviction rendered by the Sessions Judge under Section 498A of the IPC is concerned, we do not find any evidence to that effect as the witnesses who have deposed in support of the ill-treatment meted out to her is also not established by successfully establishing and in fact it is brought on record that though her marriage with Rajendra was solemnized 14-15 years prior to the incident, she never lodged any complaint.

Moreover, even if we accept the evidence of PW 1 her mother, PW 2, her uncle and PW 4 another relative, it has failed to establish any willful conduct on behalf of the accused, being of such nature which was likely to drive her to commit suicide or harassment with a view to coerce her or from any person related to her, to meet the unlawful demand for property or valuable security. In absence of the ingredients of Section 498A of the IPC being made out, even conviction of the accused for the said charge cannot be sustained and the same deserve to be quashed and set aside.

26] In the wake of above, Appeal is allowed by quashing and setting

aside the impugned Judgment dated 22.06.2016, passed in in Sessions Case No.89/2010.

The Appellant shall be set at liberty forthwith unless his incarceration is necessary in any other crime.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]