



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

CRIMINAL APPEAL NO. 11 OF 2020

1. Sheshabai w/o Kisanrao Shinde
Age 78 years, Occ: Household,
R/o. Hasegaonwadi, Taluka Ausa
District Latur.
2. Tukaram s/o Kisanrao Shinde,
Age 37 years, Occu: Driver
R/o. Hasegaonwadi, Taluka Ausa
District Latur.

...APPELLANTS

VERSUS

The State of Maharashtra

...RESPONDENT

Mr. Nilesh S. Ghanekar, Advocate for appellants
Mr. S.R. Wakle, APP for respondent-State

.....

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 25th AUGUST, 2025

JUDGMENT : [PER NITIN B. SURYAWANSHI, J.]

1. This appeal by appellants/accused takes exception to the impugned judgment and order of conviction dated 06.11.2019 passed by Additional Sessions Judge, Latur in Sessions Case No. 13 of 2017, thereby convicting appellants under Section 302 read with 34 of Indian Penal Code and sentencing them to suffer life imprisonment and directing Appellant No. 2 to pay a fine of Rs. 25,000/- and Appellant No. 1

a fine of Rs. 1,000/- with default clause.

2. Briefly stated prosecution case is that, on 21.11.2016 PW17 PSI Hanmant Bangar recorded statement/dying declaration (Exhibit-164) of Laxmibai Tukaram Shinde in Civil Hospital, Latur, wherein she has stated that in the night of 19.11.2016 her husband/accused No. 2 assaulted her with fists, kick blows and stick, abused her. Thereafter on 20.11.2016 she got up at 5.00 a.m. and while she was sitting in the pooja room (Devghar), at about 6.30 a.m. her mother-in-law/accused No. 1 came there and started abusing her. She also said that she should not be kept in the house. She poured kerosene on her from white coloured can from the back side. Accused No. 2 came from behind and set her on fire. Then both the accused went out of the house. She shouted. Thereafter her neighbors Bitabai, Tanamai and Jababai came there and someone extinguished her fire by putting blanket on her. She also implicated her sister-in-law/Accused No. 3 Suman saying that she always used to visit their house and used to instigate accused No. 1 and 2 against her and all the accused have conspired and committed the said crime.

3. On the basis of the said dying declaration, FIR

(Exhibit-4) was registered with AUSA Police Station as Crime No. 299/2016 under Section 307, 324, 323 r/w 34 of IPC. During the course of investigation, second dying declaration (Exhibit-134) of the deceased was recorded by PW14-Naib Tahsildar on 21.11.2016. Accused were arrested and on completion of investigation charge sheet was filed. Charge under Sections 302, 304B, 498-A, 323, 504 r/w 34 of IPC was framed against three accused persons.

4. In support of charge, prosecution examined 17 witnesses. The defence has examined two witnesses. The defence of the accused is that while praying, the saree of the deceased accidentally caught fire and accused No. 2 extinguished the fire and admitted her in the hospital. In the said process, he also received burn injuries. The Trial Court on appreciation of evidence acquitted Accused No. 3 Suman and convicted accused No. 1 and 2 as aforesaid. Hence, the appeal.

5. Heard learned advocate for the accused and learned APP for State.

6. Learned advocate for the accused submitted that there is material variance in the two dying declarations Exhibit-164 and 134. In the dying declaration Exhibit-134 no allegations

are made against accused No. 3-Suman. However, in the dying declaration Exhibit-164 at the end allegations are levelled against her that she used to instigate both the accused persons against the deceased. He submitted that different place of incident is given in both the dying declarations so also the manner of setting the deceased on fire is different. In Exhibit-134 she states that accused No. 2 extinguished the fire, however, in Exhibit-164 she feigned ignorance as to who extinguished the fire. Hence, by relying on ***Suresh Shrirang Mandawagne vs. The State of Maharashtra***¹ he submitted that no reliance can be placed on dying declarations which are inconsistent. The Trial Court has erred in convicting the accused, they are entitled for acquittal.

7. Learned APP, on the other hand, supported the impugned judgment and order of the Trial Court. He submitted that in both the dying declarations role attributed to the accused is consistent. The evidence of two defence witnesses needs to be discarded as they are interested witnesses. He submitted that PW1 and PW17 have categorically stated that when deceased was admitted in the hospital she was unconscious. Therefore, alleged oral dying declaration of the deceased stated by the

1 2010 ALLMR (Cri) 147

defence witnesses is not reliable. By relying on *State of Uttar Pradesh Vs. Veerpal and Another*², *State of Uttar Pradesh Vs. Santosh Kumar And Others*³, *Sukanti Moharana Vs. State of Orissa*⁴, *Puran Chand Vs. State of Haryana*⁵, *Pandharinath Budho Patil Vs. State of Maharashtra*⁶ and *Arvind Singh Vs. State of Bihar*⁷, he submitted that Trial Court is justified in convicting the accused and appeal being devoid of merit is liable to be dismissed.

8. With the able assistance of learned advocate for the accused and learned APP for State we have perused the record.

9. The prosecution has relied on two dying declarations Exhibit-134 and Exhibit-164.

10. Prosecution has proved the first dying declaration (Exhibit-164) in the evidence of PW17 PSI Hanmant Bangar. He deposed that he was serving as PSI at AUSA Police Station. On 20.11.2016, PI Jadhav gave written order that a woman has received burn injuries and he should visit there, prepare spot panchnama and record statement of that woman. Accordingly,

2 (2022) 4 SCC 741

3 (2009) 9 SCC 626

4 (2009) 9 SCC 163

5 (2010) 6 SCC 566

6 AIR 1969 (NSC) 120 (SC.)

7 (2001) 6 SCC 407

he went and conducted spot panchnama (Exhibit-75). Then he went to Civil Hospital, Latur to record statement of burnt women Laxmibai Shinde. He gave a letter to the doctor whether Laxmibai is in condition to give statement. Doctor made an endorsement on the letter (Exhibit-163), that Laxmibai is unfit to give statement. On 21.11.2016 he again gave letter (Exhibit-132) to doctor and inquired whether Laxmibai is in condition to give statement. Doctor examined Laxmibai and made an endorsement that Laxmibai is fit to give statement. Then after ascertaining condition of Laxmibai from the doctor, he recorded her statement.

11. She has stated that her marriage with Accused No. 2 took place before six years. They have a daughter and a son. They all reside together. Her husband is working as driver at AUSA S.T. depot. Since after six months of the marriage, her mother-in-law started stating something to her husband as their marriage took place against her will and therefore, her husband used to beat her. On 19.11.2016 at about 09.30 p.m. after the dinner she was sleeping along with her daughter who was suffering from cold. Her husband came to her and stated that he wanted to sleep with her. He further told that what type of cot

was given by her father in the marriage and as the cot does not have sufficient space to sleep, whether she had kept a man (भडवा) before marriage and started beating her by stick and kicks. At that time her mother-in-law was abusing her. Said incident went on till 4.00 a.m. of the next day. She was unable to sit and stand due to beating given to her by her husband on her head by stick and on her waist by kicks. Still she woke up at 5.00 a.m. to bath and performed pooja. At about 6.30 a.m. she was in the devghar (God's room). Her mother-in-law came there and started abusing her and said that she should not be kept in the house. She then poured kerosene from white tin on her body from backside. Thereafter her husband came in the room and said that he will burn her. Then he lifted match box from the small table (चौरंग), lighted a match stick, kept the match box on small table (चौरंग) and threw burning match stick on her person. After seeing that she was burning, they both went out of the house. She shouted and Bitamai, Tanamai and Zababai came there. She identified them from the voice. Thereafter she did not know who extinguished her fire by using blanket. She further stated that her sister-in-law from Latur namely Suman Sapate used to state something to her husband to her mother-in-law against her and whenever she used to visit their house, there

always used to be quarrels. The act of burning her was committed in the collusion between her mother-in-law, husband and her sister-in-law. On the basis of said statement (Exhibit-164) Crime No. 299/2016 under Section 307, 324, 323 r/w 34 of IPC was registered with Ausa Police Station and investigation was handed over to him. He then gave letter to Naib Tahsildar, Latur to record dying declaration of Laxmibai. He then carried out the investigation.

12. In the cross examination he admitted that in the investigation it is transpired that accident took place in the room in which Gods were kept. He also admitted that witness Bharat Maroti Shinde and Savita Anil Shinde visited the place of incident after the incident and he recorded their statements. He further admitted that it was transpired in the investigation that accused-Tukaram, Bharat Maroti Shinde and Savita Anil Shinde took Laxmibai to hospital. He further admitted that Bharat Maroti Shinde and Savita Anil Shinde gave statement that Laxmibai burnt herself. He also admitted that prior to the marriage of deceased with Tukaram, Sumanbai was married and she was staying at matrimonial house and she is professor in the college. He also admitted that at two places in the case papers of the

hospital it is mentioned that accidental burns were received by Laxmibai. He admitted that there is interpolation in the timing written by the doctor on said statement and there is no counter signature for interpolation.

13. PW14 Naib Tahsildar Shivaji Maroti Palepad has proved the second dying declaration (Exhibit-134), which is recorded in question answer format. He deposed that, Laxmibai disclosed her name as Laxmibai Tukaram Shinde, aged 25 years, resident of Hasegaonwadi, Tq. Ausa. Her marriage took place in the year 2011. Her husband's name is Tukaram Kisanrao Shinde. He is a bus driver. She has one son and one daughter. She was admitted in the hospital due to burn injuries. The incident took place on 20.11.2016 at about 6.30 a.m. Her husband used to come home after drinking liquor and used to beat her for petty reasons. As usual in the night of 19.11.2016 her husband came home in inebriated condition. He also consumed liquor at home. After dinner he started the quarrel and beating her. In the midnight he poured cold water on her body. He gave kicks on her waist. Then he gave a stick blow on her head, she became unconscious. After some time she regained consciousness then for some time she slept and she got up at 5.00 a.m in the

morning. Along with her mother-in-law also woke up and she again started quarreling. Mother-in-law poured kerosene on her and husband ignited the match stick and set her on fire. Thereafter she started shouting. Then husband extinguished the fire by putting blanket on her person. This accident took place in the vharanda of her house.

14. During the cross examination, he deposed that when he saw Laxmibai at that time her face, jaw, lips and neck were in burnt condition. Saline was being administered to her and treatment was going on. She was in sleeping position.

15. PW13 Dr. Sudhir Sasapardhi has given endorsement on dying declarations (Exhibit- 134 and 164). He stated that patient Laxmibai was admitted in burn ward. Police came to the hospital and gave him letter (Exhibit-132) asking him whether Laxmibai is in a condition to give statement. He examined the patient and made endorsement that she was in condition to give statement. Then he along with police went to Laxmibai and examined her. He made endorsement (Exhibit-133/1) at 7.30 pm that she was in condition to give statement. Then police recorded statement of Laxmibai. Then again he examined her and found her in condition to give statement and he therefore

made endorsement(Exhibit-133/2) to that effect.

16. On the same day at 10.00 p.m. Naib Tahsildar came for recording statement of Laxmibai. He examined Laxmibai and found her in a condition to give statement. Then he made endorsement (Exhibit-134/1) on the dying declaration. After recording dying declaration he again made an endorsement (Exhibit-134/2) that Laxmibai was in a condition to give statement.

17. In the cross examination, he stated that "it is true to say that to be conscious and to be in fit state of mind to speak coherently are different." The case papers of Laxmibai were brought on record during his cross examination, wherein on page 12 of the case papers history of patient was mentioned as accidental burns. He admitted that as per the case papers Pravin Jadhav came in the hospital along with Laxmibai when she was admitted. On the case papers signature of accused Tukaram and Pravin Jadhav are there below endorsement dated 20.11.2016, to the effect that they will not hold doctor or hospital responsible for anything happens to Laxmibai whose condition is serious. Tukaram is husband of Laxmibai and Pravin Jadhav is brother of Laxmibai. Name of Pravin Jadhav is mentioned at two places and

there are two signatures of Pravin Jadhav on the consent form. Name of Santosh Jadhav, brother of Laxmibai is mentioned at three places and his three signatures are there on the consent form. At the time of admission of Laxmibai in the hospital at 8.45 a.m. on 20.11.2016 her condition was found to be irritable. Her general condition was mentioned as moderate. The case papers show that at 8.00 a.m. on 21.11.2016, general condition of Laxmibai was mentioned as poor. On that day on second visit doctor again mentioned her condition as poor. Similar endorsement of poor condition of Laxmibai is mentioned at 7.30 p.m. and 8.30 p.m. on 21.11.2016. At that time her blood pressure was shown to be at lower side. Thereafter her general condition is mentioned as poor everywhere. He admitted that he did not mention word "examined" in the endorsement after recording dying declaration of Laxmibai by Naib Tahsildar. He further admitted that prima facie there is huge difference between signature below doctor's endorsement in dying declaration recorded by police and by Naib Tahsildar.

18. PW12 Dr. Indrajit Lakde has conducted autopsy on the dead body of Laxmibai. He deposed that Laxmibai had sustained 86% of superficial to deep burns with foul smelling

yellowish greenish, plaques of pus at places over following parts of body:-

a)	Head, neck face	7%
b)	Anterior trunk	16%
c)	Posterior trunk	16%
d)	Right upper limb	8%
e)	Left upper limb	8%
f)	Right lower limb	15%
g)	Left lower limb	16%

All these injuries were ante mortem in nature. On internal examination he found Oedema of brain matter, stomach was empty and mucosa normal. According to him, death was due to septicemic shock due to burns.

19. During the cross examination he admitted that except burn injuries mentioned in column No. 17 of the postmortem report, there was no other external injury. There were burn injuries over the lips, jaw, neck and on face. He admitted that superficial to deep injuries means injuries to dermal, epidermal layers of skin. He admitted that dermo epidermal burns are associated with considerable pain and shock as mentioned in Medical Jurisprudence of Parekh. In the present matter there were 3rd degree burns which may inevitably cause loss of function. He further admitted that in septicemic shock due to burns when death is caused, condition of patient is

deteriorated from time to time and lastly the patient dies. He also admitted that in articulating speech there will be movements of the lips, jaw, tongue, vocal cord and neck. Brain functioning is very important. There may be loss of memory if brain is not properly functioning.

20. Apart from dying declarations (Exhibit-134 and 164) the prosecution has relied on oral dying declaration given by the deceased to her relatives.

21. PW2 Mahesh Balasaheb Jadhav is the brother of deceased. He has stated that marriage of Laxmibai was solemnized with Tukaram Kisanrao Shinde in the year 2011. Dowry of Rs. 1,50,000/- and seven tola gold was given in the marriage. Laxmibai was treated well after her marriage. Thereafter her mother-in-law Sheshabai used to tell her that she did not want Laxmibai should marry Tukaram and used to harass her. Laxmibai's father-in-law expired after 2 to 2½ years of marriage due to paralysis attack, after the marriage of Laxmibai. At the time of his funeral Sheshabai told Laxmibai that due to her, her husband has expired. His parents persuaded Laxmibai. Laxmibai told her mother that her sister-in-law Suman used word 'Audasa' for Laxmibai and said that they will not allow her

to reside there. On 18.11.2016 at about 10.30 p.m. his father received a phone call of Tukaram, he abused his father and told that Laxmibai is not residing properly and she should be given an understanding. On 19.11.2016 at 8.30 p.m. accused No. 2 again called his father and asked him as to what quality of bed is given to him and he abused his father and said to him that see what game he will do with his daughter tomorrow and also used abusive word 'Bhadvya'. His parents and Santosh started proceeding towards Hasegaonwadi at 4.00 a.m. on 20.11.2016. Thereafter at about 10.00 a.m. he received call from his brother informing that Laxmibai is in 85% burn condition and she is admitted in Civil Hospital, Latur. He reached Civil Hospital, Latur on 21.11.2016. Laxmibai regained consciousness in the evening of 21.11.2016. She told that on 20.11.2016 at about 6.00 a.m. Sheshabai poured kerosene on her and her husband Tukaram set her on fire. She also stated that on the say of Suman and in collusion they have committed said act.

22. In the cross examination he admitted that on 20.11.2016 at about 8.15 a.m. Tukaram made a phone call to his father and informed that while performing pooja, Laxmibai caught fire from aarti (lamp). Similar phone was received from

his uncle Vasant Rao Jadhav. He also admitted that Tukaram got transfer on his request to AUSA depot on 30.06.2016, as his mother alone used to reside at Hasegaon. He admitted that Sheshabai is old woman and she walks with the assistance of stick.

He further admitted that after they came to hospital at Latur they all were in the hospital till the death of Laxmibai. The case papers of Laxmibai were attached to her bed and those case papers bear signature of his father and brother Santosh and Pravin Pandit. He has not seen in the case papers that twice it is written that it is a case of accidental burn. He admitted that Tukaram received burn injuries while extinguishing fire of Laxmibai and he also took treatment in the hospital. He stated that prior to marriage posting of Tukaram was at Bhiwandi and on request his second posting was given to AUSA. He denied that it was their say that Tukaram and Laxmibai should come to stay at Pune. He further admitted that he had read his statement under Section 161 and 164 Cr.P.C. before giving evidence and he gave the evidence as per the contents of the statements. "Sheshabai used to harass Laxmibai after stating her that she does not want to perform her marriage with Tukaram" is proved to be an omission in his cross examination. Accused No. 3 calling

Laxmibai as Awdasa is also proved to be an omission.

23. PW3 Chabubai Balasaheb Jadhav is the mother of deceased Laxmibai. She deposed about the alleged ill treatment meted out to Laxmibai by the accused. She has stated that accused Tukaram called her husband and informed that Laxmibai received burn as her part of saree came into contact with lamp (Diva). She stated that Laxmibai regained consciousness and she told them that her mother-in-law Sheshabai poured kerosene and Tukaram set her on fire. They burnt her on the say of Suman. Laxmibai died on 25.11.2016 while taking treatment. The three accused persons are responsible for death of Laxmibai.

24. In the cross examination, she admitted that, Laxmibai admitted in Civil Hospital at that time Pravin Panditrao, her nephew had also come to the hospital.

25. PW4 Vasant Suryabhan Jadhav is uncle of deceased Laxmibai. He deposed that for initial 7 to 8 months after the marriage, all things were good. Thereafter Laxmibai was harassed as the marriage of Tukaram was to be performed with niece of Tukaram. On 20.11.2016, he received message that Laxmibai was admitted in Civil Hospital, Latur. Then he visited Civil Hospital, Latur and saw Laxmibai in burnt condition and

unconscious. After 10 minutes, he made phone call to Balasaheb.

26. In the cross examination he admitted that he did not state before the police that after 7 to 8 months of marriage, Laxmibai was ill treated on the ground that Tukaram desired to marry with his niece. He stated that he was not aware that Tukaram also received burn injuries while extinguishing fire of Laxmibai.

27. PW5 Balasaheb Jadhav is father of deceased Laxmibai. He also deposed on the same lines of PW2 and PW3. He has also stated that on 21.11.2016 Laxmibai regained consciousness and she stated to them that accused No. 1 Sheshabai poured kerosene on her person, accused No. 2 set her ablaze and at the instance of accused No. 3 Suman she was burned.

28. In the cross examination he admitted that case papers of Laxmibai were kept near her cot in the hospital. He was not aware that there were two entries in the case papers that Laxmibai received burn injuries by accident. He was not aware that his thumb impression was taken on the case papers.

29. PW6 Dattatraya Umate is the panch of seizure of clothes of accused No. 2 Tukaram vide panchnama (Exhibit-101).

In the cross examination he admitted that police did not seal clothes in his presence. He has acted as panch witness in two cases.

30. PW7 Jainoddin Khojan is the panch to the memorandum panchnama of accused No. 2. He has not supported the prosecution case.

31. PW8 ASI Suresh Devkate is the carrier of muddemal articles to Chemical Analyzer, Aurangabad. He was given order (Exhibit-112) to carry articles to Chemical Analyzer, Aurangabad and he handed over muddemal articles and obtain endorsement on the letter (Exhibit-113).

32. PW9 Nilkanth Jadhav is panch to the memorandum panchnama (Exhibit-116) of accused No. 1 Sheshabai. He has not supported the prosecution case.

33. PW10 Santosh Dhotre has proved memorandum statement (Exhibit-116) of accused No. 1.

34. PW11 Sunita Murkute is the lady police constable who has seized saree of Accused No. 1 pursuant to the

memorandum statement (Exhibit-116). She also proved injury certificates of accused No. 1 (Exhibit-124) and accused No. 2 (Exhibit-125).

35. PW16 Yogesh Gaikwad is the Police Naik who was at the relevant time was on duty at Civil Hospital, Latur. On receipt of M.L.C. report (Exhibit-152) from the Civil Hospital, Latur in respect of Laxmibai, he went to the doctor and asked them whether Laxmibai is in a condition to give statement. Doctor informed that she was not in condition to give statement. Accordingly, by letter (Exhibit-153) he informed the said fact to the police station.

He admitted that on that day Laxmibai was not in condition to give statement.

36. PW1 Dayanand Ramgir Giri has proved the spot panchnama (Exhibit-75). He is the neighbor of deceased and accused. He deposed that he and Sambhaji Sathe on 20.11.2016 were called at the house of accused for panchnama. The house was having tin roof. There was one room then there were stairs. They climbed the stairs. There was another room having cupboard, cot, T.V. and other household articles in the said room. There were two rooms on the northern and southern side. There

were other two rooms also. They went to the room which was towards southern side. There was a place to keep Gods (Devghar). The match box was lying there. One half burnt stick was lying there. There was one Chimani (lamp) of kerosene. One burnt Godhadi (quilt) was there. The gods were spread in the room. Police seized the articles in bag and prepared panchnama (Exhibit-75).

37. In the cross examination he deposed that his house is at a distance of 200 to 250 feet from the house of Sheshabai. He was at the village at the time of incident. He went there. About 50 persons had gathered there. Bitabai Nanasaheb Lavte, Tanamai Ramrao Shinde, Zababai Venkat Pawar were also present there. Tukaram-accused No. 2 extinguished the fire of Laxmibai with the help of blanket and at that time his hands also received burn injuries. Laxmibai told that while she was doing pooja corner of her saree (Padar) caught fire from Diva. The days were of winter. Tukaram took Laxmibai in the vehicle of Ran Gunjote to the hospital at Latur. He admitted that there was no smell of kerosene at the place of worship (Devghar). He further admitted that the burnt clothes were also not smelling of kerosene. He further admitted that Sheshabai is pretty old

woman and therefore she requires support of stick for walking and she cannot see far away and she is not active.

38. The defence has examined Savita Anil Shinde (DW1). She deposed that she knows accused Sheshabai and Tukaram as they are resident of Hasegaonwadi. She also knew wife of accused Tukaram namely Laxmibai, she is not alive. She died as corner of her saree (padar) fell on the flame of a lamp in Devghar in the house of accused Tukaram, in the incident occurred on 20.11.2016 at about 6.30 a.m. At that time, she was sprinkling water in front of her house. She heard hue and cry from the house of accused Tukaram. Then she went to the house of Tukaram. Several other persons went to the house of Tukaram at that time. Zebabai, Bitabai, Tanubai Shinde, Chandubai, Dayanand Giri were in those persons. She asked Laxmibai how incident occurred and Laxmibai told that while performing pooja, corner of her sari (padar) went on the flame of lamp (Diva) and she did not understand anything thereafter. At that time Tukaram also received burn injuries to hand and face. Thereafter, vehicle of Ram Gunjote was brought there. Then Bharat Shinde, herself, Tukaram Shinde and driver Ram took Laxmibai to Civil Hospital, Latur. They reached there at

about 8.00 a.m. Paternal relatives of Laxmibai reached hospital before them. The relatives of Laxmibai, her cousin Pravin, they all admitted Laxmibai in the hospital. Relatives of Laxmibai asked her how she burnt. Laxmibai told them that corner of her saree fell on the flame of lamp (Diva) and she burnt. She knew accused Sumanbai. She is lecturer in the college and resides at Latur. Sumanbai used to visit Hasegaonwadi occasionally and used to stop there for 1-2 hours.

39. In the cross examination she stated that her house is situated after two houses from the house of accused Tukaram. Tukaram is her brother-in-law, he is cousin of her husband. She went to the house of Tukaram at the time of extinguishing the fire. When she went there already a blanket was put on the body of Laxmibai.

40. DW2 Ram Gunjote deposed that he knew accused Sheshabai and Tukaram as they were also resident of Hasegaonwadi. He also knew Laxmibai. On the day of incident he was at his house. He owns a jeep. Suresh came to his house. Then he went along with jeep. He talked with Laxmibai. She told that corner of her saree (padar) fell on the flame of lamp (Diva) and she was burnt. Several persons residing in the area and in

the village were present at that place. Bharat Shinde, Savita Shinde and Tukaram Shinde took Laxmibai to Civil Hospital, Latur in his vehicle. They reached at Civil Hospital, Latur at 8.00 a.m. Relatives of Laxmibai had already reached there. They and relatives of Laxmibai admitted her in the hospital. Laxmibai told her relatives that as corner of her saree fell on the flame of lamp she got burn injuries. Accused No. 2 Tukaram also received burn injuries.

41. In the cross examination by learned APP he admitted that his statement was recorded on 03.01.2017. Nothing supporting to the prosecution case is brought on record in his cross examination.

42. On appreciation of evidence, Trial Court has convicted the accused by relying on dying declarations (Exhibit-134 and 164) holding that both the dying declarations are recorded at the earliest opportunity. There is no conflict in the version of those two dying declarations so as to disbelieve them. The learned Trial Judge has also relied on the oral dying declaration made by the deceased to PW2 Mahesh, PW3 Chabubai and PW5 Balasaheb holding that the oral dying declaration made to these witnesses is consistent and there is no

evidence on record to discredit the dying declaration and the testimonies of those witnesses.

The learned Trial Judge, however, disbelieved the evidence about seizure of clothes of accused pursuant to the memorandum statements made by them on the ground that the clothes recovered from the accused were not sealed and therefore CA reports could not be considered. The prosecution case to the extent that accused No. 2 Tukaram assaulted Laxmibai in the night by stick is also disbelieved by the Trial Court. The Trial Court also disbelieved the prosecution evidence in respect of alleged harassment of deceased Laxmibai holding that evidence of prosecution witnesses is vague about alleged cruelty to the Laxmibai by the accused and ingredients of offences under Section 498-A, 323, 504 of IPC are not proved.

43. On careful scrutiny of the dying declarations Exhibits-134 and 164, we find following material inconsistencies.

Dying Declaration Exhibit-134	Dying Declaration Exhibit-164
On 19/11/2016, as usual came to the house after drinking liquor. He also consumed liquor at home and started quarreling and assaulting after dinner at night.	On 19/11/2016, at about 09:30 p.m. we all family members had dinner together, thereafter my daughter slept with me as she had cold.
Poured cold water on the body at midnight, kicked in the back thereafter hit wooden stick on the head.	At that time my husband came to me and said that he wants to sleep with me on the cot and said that what kind of cot your father

	has given, there is no sufficient space and abused and said whether you had kept man (Bhadava) before marriage, started assaulting by fist and kick blows and stick.
I became unconscious, after some time regained consciousness, slept for some time and woke up at 05:00 a.m. in the morning. Mother-in-law woke up along with me and started the quarrel.	At that time mother-in-law was also abusing, all this chaos lasted till 04:00 a.m. in the morning.
	As the husband had assaulted with stick on the head and kicked in the back, I was not able to stand and sit. On 20/11/2016, at about 05:00 a.m. after waking up and cleaning, bathing, performing prayer (Pooja) and drinking tea, came to the room where Gods were kept (Devghar) at 06:30 a.m.
My mother-in-law poured kerosene on the body and husband by igniting matchstick set her on fire.	
	After that mother-in-law came in the room in which I was present and unnecessarily started abusing and by saying that this offspring is not worthy of keeping in their house, by taking white coloured can started pouring on my body from backside, at that time husband immediately came from backside and by saying that set her on fire, took matchbox from the small table (Chourang) and by igniting matchstick and throwing burning matchstick on my body and seeing my body burning, both mother and son left the room.
	As I started hue and cry, I heard sound of neighbours of our house

	Bitabai, Tanamai, Jababai coming, I recognized them by their voice.
After that I screamed loudly, then by putting banket on my body husband extinguished the fire.	After that I don't remember who extinguished the fire by putting blanket on my body, after that I don't remember anything
All this happened in the porch of my house	
	Also, my sister-in-law of Latur Suman Sapate always used to instigate my husband and mother-in-law against me, whenever she used to visit her maternal home quarrels used to happen at our house.

44. It is evident from the above that in dying declaration (Exhibit-134) she has stated that her husband has extinguished the fire whereas in dying declaration (Exhibit-164) she states that she does not remember who extinguished the fire by putting blanket on her body. In dying declaration (Exhibit-134) she has stated that husband came home in inebriated condition and he also consumed liquor at home. This fact is not stated by her in dying declaration (Exhibit-164). So also pouring of cold water on her body at midnight is mentioned by her in dying declaration (Exhibit-134), the said fact is not there in dying declaration (Exhibit-164). In dying declaration (Exhibit-134) she stated that she became unconscious, however, this fact is not stated in dying declaration (Exhibit-164). In dying declaration (Exhibit-

134) she has stated that the incident took place in the porch of her house whereas in dying declaration (Exhibit-164) she stated that incident has taken place in devghar. Thus, there is material variance in both the dying declarations in respect of sequence of events, manner in which incident has taken place and the spot of incident, which render both the dying declarations doubtful.

45. As per dying declaration (Exhibit-164) Accused No. 1 poured kerosene and Accused No. 2 set the deceased on fire and they both left from there. If this has to be accepted then Accused No. 2 would not have received burn injuries while extinguishing fire of the deceased.

46. It is pertinent to note that PW12 Dr. Indrajit Lakade, who has conducted the post mortem has not seen any external injury except the burn injuries on the dead body of the deceased. Thus, there is no injury by stick on the head as is alleged by the deceased in both the dying declarations. This witness has deposed that there was burn injuries over the lips, jaw, neck and face. He has further admitted that dermo epidermal burns are associated with considerable pain and shock and the deceased has received 3rd degree burns which may inevitably cause loss of function. There may be loss of memory if

the brain is not properly functioning. In articulating speech there will be movements of the lips, jaw, tongue, vocal cord and neck. Taking into consideration the 3rd degree burn injuries caused to the deceased and in the light of evidence of PW12, we are unable to rely upon the dying declarations Exhibit-134 and 164.

47. In **Suresh Arjun Dodorkar (Sonar) Vs. State of Maharashtra**⁸, it is held;

"In cases resting on multiple written dying declarations, the Courts cannot pick and choose any one dying declaration. All the dying declarations have to be consistent in respect of material aspects of the incident. According to us, consistency is expected in multiple dying declarations in respect of the names and the number of accused, the prelude to the incident and the incident itself. In these two dying declarations there is consistency in respect of the name and the number of accused. However, there is variance. There is also variance in respect of the incident itself. The variance is apparent on perusal of the dying declaration and can be discerned from the perusal of the same. Therefore, according to us, no reliance can be placed on the two written dying declarations at Exhs. 24 and 27 as acceptance of any one dying declaration necessarily renders the other as false. If in the dying declaration the truthfulness of the narration itself is rendered doubtful, no reliance whatsoever can be placed on the dying declaration. Merely because the overt act attributed to the accused is consistent in both the dying declarations would not make the dying declarations a reliable piece of evidence. The dying declaration has to pass all the tests of reliability as the declarant is not available for cross examination. In cases where there are multiple dying

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declarations and acceptance of one dying declaration falsifies the other; the dying declarations have to be necessarily rejected. In our opinion, therefore, no reliance can be placed on the dying declarations at Exhs. 24 and 27".

48. In Suresh Mandawgane (supra) by relying on decision in Suresh Dodorkar (supra) in similar facts by noting the inconsistencies in the dying declarations this Court rejected the evidence of prosecution based on two inconsistent dying declarations.

The observations in both the rulings are squarely applicable to the facts of the present case.

49. Both the dying declarations are suspicious in the light of evidence of PW1 Dayanand Giri, who reached the spot of incident and saw accused No. 2 Tukaram extinguishing the fire of Laxmibai with the help of blanket and receiving injuries in the said process. He has also heard oral dying declaration of Laxmibai that while doing pooja corner of her saree caught fire from the lamp (diva) and she received burn injuries accidentally. This version of PW1 about the oral dying declaration made by Laxmibai is corroborated by the evidence of DW 1 and 2, who being neighbors their presence at the spot is natural.

50. In the spot panchnama (Exhibit-75) it is nowhere mentioned that there was smell of kerosene at the spot of incident. The can of kerosene was found on the plank fixed on the wall. There is no evidence on record to show that clothes and blanket seized from the spot had a smell of kerosene. It is mentioned in the spot panchnama that rangoli was scattered and gods were spread. All these aspects probabalize defence version of accidental burns received by the deceased.

51. As per record Laxmibai was admitted in the hospital at 8.00 a.m. and at that time as per the evidence on record her parents and maternal relatives were present. The prosecution witnesses i.e. relatives of Laxmibai have admitted that Accused No. 2 called PW5 and informed him that at the time of pooja, corner of her saree (padar) fell on the lamp and caught fire and she received burn injuries in the said incident. It has also come in the evidence that Pravin, her brother was present at the time of admitting her and he has signed on the medical papers. In the medical papers history of accidental burns is mentioned. The evidence on record further indicates that at the time of admission Laxmibai was not in a condition to speak and she was unconscious. Dying declaration (Exhibit-164) is the first dying

declaration which is recorded on 21.11.2016 at 8.30 p.m. in the night and the second dying declaration (Exhibit-134) is recorded on 21.11.2016 at 10.30 p.m. Since the admission of Laxmibai till her death her parents and maternal relatives were all along present in the hospital. So there is strong possibility of tutoring. On that ground also both the dying declarations are doubtful.

52. PW13 Dr. Sudhir Sasapardhi has admitted in his evidence that condition of the deceased was poor at 7.30 p.m. and 8.30 p.m. Her blood pressure was shown to be at lower side and thereafter her general condition was mentioned as poor everywhere. There is no endorsement of PW13 at the beginning of dying declaration (Exhibit-164). He has also admitted that to be conscious and to be in fit state of mind to speak coherently are different things. He has further admitted that prima facie there is huge difference between signatures below doctor's endorsement in both the dying declarations. He has also admitted that he did not mention word "examined" in the endorsement after recording dying declaration of Laxmibai by Naib Tahsildar. All these admissions create serious doubt about the truthfulness of both the dying declarations.

53. In view of cogent and reliable evidence of PW1, DW1

and DW2, who are the natural witnesses and who have reached the spot at the time of incident, we refuse to rely upon the evidence of PW2, PW3, PW4 and PW5, who have deposed about the alleged oral dying declaration of the deceased.

54. The investigating officer has admitted that he has recorded statements of Bitabai, Tanamai and Jababai, neighbors of the deceased, who had immediately reached the spot of incident. Adverse inference under Section 114(g) of the Indian Evidence Act, needs to be drawn against the prosecution for not examining these witnesses.

55. The Trial Court has ignored the aforestated serious lacunas' in the prosecution case and has erred in relying on two dying declarations as well as oral dying declarations given by the Laxmibai to her relatives ignoring the settled legal position that in cases of inconsistent dying declaration benefit needs to be given to the accused and merely because overt act is attributed to the accused is consistent in both the dying declarations, it would not make dying declarations a reliable piece of evidence. The Trial Court has erred in rejecting the reliable and cogent evidence of PW1, DW1 and DW2. The Trial Court has therefore committed serious error in convicting the accused by ignoring

the fact that prosecution has failed to prove the guilt of accused beyond reasonable doubt. The impugned judgment is therefore unsustainable in law and facts of the case.

56. In the result, following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned judgment and order passed by learned Additional Sessions Judge, Latur in Sessions Case No.13 of 2017 is hereby quashed and set aside and appellants are acquitted.
- (iii) Appellant No.2 be released forthwith, if not required in any other case.
- (iv) Bail bond of Appellant No. 1 shall stand cancelled.
- (v) The appellants/accused to execute bail bonds under Section 481 of Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 437A of the Criminal Procedure Code).

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)