



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 313 OF 2019

Kachru Balaji Kotkar
Age 72 years, Occ. Agriculture,
R/o. Nepti Road, Lalanagar, Kedgaon,
Tq and Dist. Ahmednagar

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr. Joydeep Chattarji, Advocate for appellant
Mr. S.R. Wakale, APP for respondent.

WITH

CRIMINAL APPEAL NO. 314 OF 2019

1] Ramdas Kacharu Kotkar
Age 35 years, Occupation Driver,

2] Alka Ramdas Kotkar,
Age 32 years, Occ. Housewife,
Both R/o. Nepti Road, Lalanagar, Kedgaon,
Tq. and Dist. Ahmednagar

.. APPELLANTS

[Ori. Accused Nos. 1 and 2]

versus

The State of Maharashtra

.. RESPONDENT.

Mr. Vijay R. Gundecha, Advocate for the appellants
Mr. S.R Wakale, APP for respondent.

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

**RESERVED ON : 15th SEPTEMBER, 2025.
PRONOUNCED ON : 13th OCTOBER, 2025.**

JUDGMENT [PER MEHROZ K. PATHAN, J] :-

1. The appellants have filed present appeals thereby challenging the judgment dated 28.11.2018 passed by the Sessions Judge, Ahmednagar in Sessions Case No. 103 of 2017, whereby, appellants Ramdas Kotkar, Alka Kotkar, Kachru Kotkar, were convicted for the offence punishable under Sections 302 r/w. 34 of IPC and were directed to suffer life imprisonment and to pay fine of Rs.3,000/-, in default , to suffer R.I. for 3 months.

2. The case of the prosecution is that, Ganesh Kotkar, (husband of the deceased- Ranjana Kotkar) had brought his wife in burn condition in the Civil Hospital Ahmednagar, wherein, treatment was given to her. She noted the history of burn injuries as “due to explosion of stove while cooking”. The MLC was received by the concerned police station and the police Office – ASI Shri Rane approached the concerned doctor Supriya Veer – Jagtap and requested her to examine the patient and state whether the patient is in a fit state of mind and capable to give statement.

3. After receiving the endorsement by the Doctor Supriya Jagtap that the patient is fit, ASI Rane recorded her statement, wherein, she narrated that at about 9.00 a.m. on 25.3.2017, when she was doing household work, the children were playing in the house and suddenly, the appellants herein started abusing the victim and her children. Victim Ranjana had a verbal altercation with them and she made them understand not to abuse her children. The victim Ranjana further stated that the appellants were always abusing Ranjana on some or the other trivial issue and asked the appellants to behave properly and enter her house. All the 3 accused followed her and abused her, accused – Kacharu, father in law, caught hold of both hands of the victim, Ramdas,

brother in law of victim (accused No.1) poured kerosene on her person and Alka, sister in law of the victim (accused No.2) had lit the match stick and set the victim ablaze. The husband of the victim – Ganesh Kotkar came running from opposite direction and attempted to extinguish the fire with the help of cloth and thereafter, many neighbouring persons were present. The father in law had also extinguished the fire by putting the quilt on the deceased. The deceased sustained several burn injuries on her face, chest, stomach and back. After recording the statement of deceased Ranjana, Dr. Jagtap had examined patient and made another endorsement below the statement that the patient was conscious and oriented throughout the treatment.

4. The police Inspector ASI Rajee further wrote a letter to the Special Judicial Magistrate requesting him to record the another statement of the patient Ranjana. Accordingly, the Special Judicial Magistrate recorded second statement of Ranjana in presence of the same medical Officer – Dr. Supriya Jagtap. Thus, on the basis of statement of Ranjana, an offence was registered at Kotwali Police Station, Ahmednagar vide Crime No. 151 of 2017 for the offence under Section 307, 504 r/w. 34 of IPC. On 26.03.2017, Ranjana succumbed to injuries and therefore Section 302 IPC was added.

5. The investigation progressed and after collecting the relevant evidence like recording spot panchanama, seizure of articles from the spot, recording of statements of witnesses, Dying Declarations, seizure of clothes, drawing of inquest panchanama, the investigation was complete and charge sheet was filed before the learned jurisdictional court i.e. 3rd JMFC, Ahmednagar. The case was committed to the learned Sessions Judge being exclusively triable by a Court of Sessions and as such, the learned Sessions Judge had framed charge under Section 302, 504 r/w. 34 of IPC against all the accused persons wherein accused have pleaded

not guilty and claimed to be tried.

The prosecution had examined of in all ten witnesses to bring home the guilt of present appellants and further relied upon various relevant documents to prove the case. The learned Sessions Judge, after considering the evidence led by the prosecution and also considering the explanation given under Section 313 of Cr.PC., was pleased to hold the appellants guilty of committing gruesome murder of the deceased Ranjana and thereby convicted the appellants under Section 302 r/w. 34 of IPC and sentenced them for imprisonment for life and fine.

6. We have heard Shri Joydeep Chatterji, learned Advocate appearing for the appellant Kachru in Criminal Appeal No. 313 of 2019, Shri Vijay Gundecha learned Advocate for the appellants in Criminal appeal No. 314 of 2019 and Shri S.R. Wakale learned APP appearing for the State in both the appeals.

7. Shri Chatterji, learned advocate for the appellant submits that the prosecution has grossly failed to establish the guilt of the appellants beyond reasonable doubt. The recording of dying declarations is itself doubtful, inasmuch as, the prosecution witness No.1 Sharad Pawar, who was witness on the inquest panchanama had specifically stated that both the hands and legs and dead body were totally burnt including the fingers. It is further stated by PW 1 that skin of both hands and legs of dead body was hanging and that he has minutely seen all these things, therefore, is deposing before the court. He further relied upon the documents inquest panchanama at exh.19 which specifically speaks about the burn injuries sustained by the deceased as stated by PW-1. Shri Chatterji would further submit that Baban Japkar, brother of the deceased Ranjana has specifically deposed that his sister Ranjana had

expired due to explosion of stone and has denied that on 24.3.2017 his sister Ranjana had made a phone call complaining about the cruelty committed by the appellants on account of agricultural land. Said witness is declared hostile by the prosecution and even in the cross examination, said PW-2 deposed that his sister Ranjana informed him that she was burnt due to explosion of stove and that accused Ramdas had returned from his work at the evening time. It is further stated in his cross examination that all the accused persons were present in the funeral of Ranjana on 26.3.2017. Mr. Chatterjee, therefore, submits that the real brother of the deceased Ranjana itself did not support the prosecution case, which creates a serious doubt about the prosecution story putting deceased Ranjana on fire by the appellants.

8. The next limb of arguments of the appellants is that PW-3 Ganesh Kotkar, who happens to be the husband of deceased Ranjana is not made accused in the crime as there was no indictment of Ganesh in the alleged dying declarations by deceased Ranjana. PW-3 Ganesh (husband of deceased) has specifically stated in cross examination that his elder brother Ramdas (accused No.1) was a driver by profession and on the date of incident, he was in Supa. PW-3 further stated in cross examination that, on the date of incident, his father was at field. He further stated that his wife Ranjana was cooking and caught fire due to blast of stove. He and his father extinguished the fire. Mr. Chatterji, further states that thus, PW-3 who is husband of the deceased and is not arrayed as accused had clarified in his further cross examination that about 6 years ago, there was partition of the family properties between the brothers and therefore, there was no dispute regarding the property between the appellants and husband of the deceased i.e. PW-3 Ganesh. He, therefore, submits that even the husband of the deceased was present on the spot and extinguished the fire alongwith father – accused Kachru, he did not attribute any role to the accused persons in putting deceased

Ranjana on fire. Thus, the testimony of PW-3 husband also creates serious doubt about the prosecution story.

9. Next witness PW-4 Somnath Gaikwad was a panch witness on the spot panchanama, who had specifically stated in the cross examination that the police have not seized the stove from the spot of incident. The learned counsel for the appellant therefore, submits that there is suppression of material fact by the prosecution inasmuch as, the prosecution has failed to seize the stove, which was important piece of evidence only with an intention to implicate the present appellants. The spot panchanama only shows match box, gunny bags and 5 burnt clothes, one quilt and a drum. Thus, the stove which was important article was deliberately not seized from the spot. The evidence is, therefore, doubtful and liable to be rejected.

10 PW-5 Dr. Shrikant Pathak who conducted the post mortem, has specifically stated that deceased Ranjana was examined by her for post mortem and that he found 85 % superficial deep burn injuries. The witness No.5 also did not notice any ink on the thumb or limb of dead body. Thus, creating doubt about the thumb impression appearing on the first dying declaration as well as second dying declaration, which was allegedly recorded immediately before the death of the deceased. The appellants therefore, submits that the same creates doubt regarding dying declaration.

11. The next witness PW-6 ASI Abdul Kalim Ibrahim Raje, recorded the first dying declaration and gave requisition to the Special Judicial Magistrate to record the second dying declaration. The witness states that on 25.3.2017 he gave a letter (Exh.38) to Dr. Supriya Jagtap to examine the patient for recording her dying declaration (Exh.39).

12. PW-7 Dattatray Pawar, who had only registered the FIR on

the basis of statement (Exh.39) i.e. dying declaration recorded by ASI Rane at Kotwali Police station.

13. PW-8 is Dr. Supriya Jagtap who made endorsement about fitness of deceased Ranjana for recording her statement. The witness though states that she had examined the patient at about 7.15 p.m. after asking questions to the patient, the counsel for the appellant submits that the questions which were asked to the patient were not part of the record. It is further argued that cross examination of the said witness Dr. Supriya Jagtap shows that she had not even checked the blood pressure of the patient. As per the IPD papers, the patient was admitted in the hospital with history of accidental burn injuries. The fitness was given by the doctor on first dying declarations Exh.39. Therefore, it does not inspire any confidence and could not have been relied upon by the learned Sessions Judge to rest the conviction of appellants.

14. PW-9 Ganesh Joshi is the witness, who has recorded second dying declaration of deceased Ranjana. It is submitted that said witness, who is Special Judicial Magistrate has not stated in his deposition that he had read over the contents of dying declaration to deceased Ranjana and thereafter took the thumb impression of the deceased. The counsel for appellant submits that the contents of the dying declaration were not read over to the deceased. Same is one of the important factors to be considered while evaluating the truthfulness and veracity of dying declarations.

15. The Witness Sandip Patil, I.O. had conducted the investigation and filed charge sheet in the crime. The I.O. had specifically admitted the serious lacuna on his part which amounts to suppression of the real story by the prosecution, inasmuch, the I.O. did not collect the IPD papers from the Civil Hospital Ahmednagar, which clearly stated about the accidental burn injuries suffered by deceased Ranjana. The witness

IO has also not collected the other evidence i.e. tower location of cellular phone of Ramdas who was allegedly not present on the scene of offence as per the defence.

16. Thus, the submission of learned counsel is that, considering the testimony of prosecution witnesses, the same does not inspire confidence about the veracity of the dying declarations relied upon by the prosecution and as such, the same needs to be discarded.

17. Shri Chattarjee also made submission that counsel for appellant has also examined 3 defence witnesses to disprove the charge. Amongst the witnesses examined by the defence is Dr. Pushpa Narote, who has proved the IPD papers which was deliberately suppressed by the prosecution. The sum and substance of testimony of DW-1 is that, she took the entry of hospital of patient at Exh.67 i.e. IPD paper, on the basis of statement given by Ganesh Kotkar (PW-3) husband of deceased that the victim had sustained burn injuries due to explosion of stove. The witness Dr. Pushpa Narote further stated that the victim had also stated that she had burn injuries due to explosion while she was cooking. The submission is, therefore, that such an important piece of evidence Exh.67 was suppressed by the prosecution and the said doctor taking the entry in the MLC record i.e. IPD papers, was also not examined by the prosecution, thereby leading to erroneous conviction of the appellants. This witness and Exh.67 is that the said history given by Ganesh – husband of the deceased Ranjana should be considered as the first dying declaration and other dying declarations are concocted story manipulated by relatives of deceased and falsely implicating the appellants. The submission, therefore, is that since the first dying declaration exonerates any role of the appellants in the burn injuries caused to deceased Ranjana, The contrary dying declarations therefore

becomes doubtful and liable to be discarded.

18. It is submitted that another important witness examined by defence is DW-2 Alka Karale, who happens to be neighbour of deceased Ranjana, who has categorically stated that at about 9.00 a.m. Ganesh Kotkar and Kachru Kotkar were working in the field which is nearby and Ramdas, accused No.1 had gone to Pune. The submission is, none of the appellants were present on the spot when the incident of burning of deceased Ranjana had taken place. The prosecution story is therefore doubtful.

19. Another defense witness examined by defence is Balasaheb Urmude DW-3, who was employer of the accused No.1 Ramdas, as Ramdas was working as a driver on the vehicle owned by DW-3. DW-3 Balasaheb Urmude has specifically stated that on the date of incident, Ramdas Kotkar was driving his vehicle to proceed to Pune at about 5.30 a.m. in the morning and therefore, submission is that, accused Ramdas was not present on the date of incident on the spot and that the incident took place due to explosion of stove. Thus, it is submission of the learned counsel for the appellants that the story of the prosecution creates serious doubt about the genuineness and authenticity of the dying declarations upon which the trial court has relied to rest the conviction of all the 3 accused persons. It is submitted that such doubtful documents i.e. 2 Dying Declaration could not have been relied upon by the trial court, which suffer from various infirmities and contradictions. The appellant therefore prayed that the conviction which is solely based upon the two dying declarations recorded by the prosecution is therefore liable to be quashed and set aside.

20. As against this, learned APP Mr. Wakale, appearing on behalf of the State in both the appeals submitted that there is no inconsistency

in the two dying declarations and the dying declarations were recorded after examining the fitness of the patient - deceased Ranjana. There is no doubt created by the defence about the motive of the doctor who gave the fitness and the police inspector and Special Judicial Magistrate who have recorded the dying declarations, having any prejudice as against the appellants, so as to falsely implicate them in the said crime. The cross examination is completely silent to the point of any motive on the part of independent witnesses i.e. the Doctor on fitness, the Special Judicial Magistrate and the Investigation Officer, who are all independent witnesses and therefore, reliable witnesses.

22. The further submission of learned APP is that there is discrepancy in the statement of DW-1 Dr. Pushpa Narote and DW-2, as to the timing of the incident stated by them. Smt. Narote (DW-1) has stated in the ID papers that the incident has taken place at about 11.00 a.m. at home, whereas, the witness DW-2 has stated that incident took place at 9.00 a.m. in morning on the date of incident. Thus, the said witnesses are not reliable.

23. The APP has further submitted that Baban Japkar brother of the deceased has turned hostile, however, portions marked as A B C and D are proved by examining the IO., who has stated that the said portions mentioned were recorded as per the say of the witness PW-2 Baban and PW-3 Ganesh. He, therefore, submits that even though the witnesses turned hostile, their entire statements can not be discarded and some questions to which they have supported the case of the prosecution, can be relied upon in support of the dying declarations.

24. The next submission is that, DW-3 Mr. Balasaheb Urmude, examined by the defence, is a got up witness, who has falsely stated that the accused No.1 Ramdas was driving his vehicle. There is nothing brought on record by the defence to show that the accused No.1 Ramdas

was actually serving with said Balasaheb Urmude as a driver. Neither any salary slip, nor any appointment letter or any relevant document is produced to show that the accused No.3 was not on the spot on the date of incident and in fact, was driving his vehicle at Pune, leaving at 5.30 a.m. on the date of incident. Thus, the testimony of all the 3 defence witnesses is liable to be discarded. The impugned judgment is just and proper and deserves to be maintained, thereby maintaining the conviction of the appellants.

25. Mr. Gundecha, learned counsel for the appellants in Criminal Appeal No. 314 of 2019 i.e. Ramdas and Alka, had also made his submissions, by assailing the dying declarations relied upon in the impugned judgment. The timings of the Dying Declarations are doubtful, inasmuch as, Exh.40 shows that requisition is made by ASI Raje to the Special Judicial Magistrate and received by Mr. Joshi at 7.00 p.m. on 25.3.2017. It is specifically stated that requisition issued to Dr. Jagtap on 25.3.2017 at 07:05 pm. by Shri Joshi, Special Judicial Magistrate. The Doctor examined the patient at 7.15 p.m. as appearing on Exh.46. PW-9 Shri Joshi has stated in examination in chief that he has received the requisition from ASI Raje at 7.00 p.m. at home for recording the statement of the deceased. Thus, the argument is that though Shri Joshi PW-9 leaves at 7.00 p.m. from his house at Savedi, as it has come in the cross examination that it took only 5 minutes thereafter to reach the Civil Hospital and gave the requisition to the doctor, which is at Exh.45 at 7.05 p.m. and thereafter recorded the statement of deceased. Thus, the argument of Mr. Gundecha is that, timings appearing on Exh.40 as 7.00 p.m. and Exh. 45 as 7:05 p.m. and Exhibit 46 as 07:15 pm creates a serious doubt about the authenticity and genuineness on the entire procedure followed for recording the dying declaration. He, therefore, submits that the same can not be relied upon to rest conviction.

26. Another limb of argument of Shr Gundecha appearing for accused Ramdas and Alka is that the statement was not read over by Shri Joshi PW-9 to the deceased, as is admitted by him in his cross examination. He, therefore, submits that this is another circumstance to bring the dying declarations under the cloud of suspicion and, therefore, can not be relied upon.

27. Further extension of argument on behalf of Mr. Gundecha is that there are no signs of struggle on the body of deceased if the allegations of forcible pouring of kerosene on the body of deceased is to be believed. The allegation in the dying declarations is that accused Kachru caught hold of the deceased and accused Ramdas poured kerosene on the deceased, and accused Alka lit the match stick. Thus, there ought to have been some struggling injuries appearing on the body of the deceased, whereas, the Post Mortem report does not show any signs of injuries which can be referred to such injuries which shows that deceased resisting such act of forcible burning. Therefore, in absence of any such injuries which could have been referred as signs of struggle, the entire story of prosecution creates a serious doubt.

28. Further submission is, there is no motive proved on record to show that the accused persons could have a reason for putting the deceased on fire. The alleged motive has also been denied by the real brother of the deceased and as such, the same cannot be relied upon.

The dying declaration shows timing of the burning incident as 9.00 a.m. in the morning (Exh.39 and 46) whereas, the IPD papers show the incident to have occurred at 11.00 a.m.. Thus, there is a serious discrepancy warranting interference in the judgment of conviction.

29. Details of burn injuries was not given by concerned doctor, who had examined the patient giving fitness certificate before recording

the dying declaration. This is also a serious flaw in the prosecution case inasmuch as, second dying declaration does not make any mention about the first dying declaration being recorded by the prosecution. CA report are not produced on record and therefore, even though the articles were seized from the spot, there is no corroborative piece of evidence which would lend credence to the veracity of the dying declarations.

30. The Submission is, therefore that the entire prosecution story is concocted one only to falsely implicate the accused persons. The impugned judgment is, therefore, liable to be set aside.

31. We have considered the submissions made by Mr. Chattarjee, for appellants in Criminal Appeal No. 313 of 2020 and Mr. Vijay Gundecha for appellants in Criminal Appeal No. 314 of 2020, and the learned APP for Mr. S.R. Wakale for the state on both the appeals and perused the entire record with their assistance.

32. In support of submission made by Shri Chatterjee, he has relied upon following judgments :-

(i) ***Prabhakar Wamanrao Salve vs. State of Maharashtra 2006 All M.R. (Cri.)1274***, on the point of suppression of vital piece of evidence cast a serious doubt about the genuineness and truthfulness of dying declarations.

(ii) ***State of Punjab Vs. Gian Kaur, 1998(2) Crimes 25 (SC)*** on the point of evidence of doctor found unreliable as he failed to make endorsement of appearance of thumb mark on the dying declaration when the deceased had received 100% burns and the thumb mark of the deceased had clear ridges and curves.

(iii) ***Chhaya Bhausaheb Bhingardive vs. State of Maharashtra***

2024 (1) Bom CR (Cri.) 276 on the point that when there is a doubt about recording of dying declaration, there is a need for corroborative evidence to rely upon such dying declaration.

(iv) ***Shahrukh Salim Pathan vs. The State of Maharashtra 2023 Bom. C.R. (Cri.) 104***, on the point reiterating the principles laid down by the Supreme Court while analyzing and accepting declarations and further on the point that the history given by deceased of suffering accidental burn injuries creates doubt about the dying declarations relied upon by the prosecution and in the present case the said history given in the IPD papers being suppressed by the prosecution was brought on record by examining defence witnesses.

(v) **Sk. Gulab @ Gulam s/o Sk. Ahmed Vs. The State of Maharashtra 2018 All M.R. (Cri.) 1250** on the point that due to non examination of neighbours, adverse inference needs to be drawn against prosecution.

(vi) **Mahadeo Prabhu Lohdhe vs. State of Maharashtra, 2015(1) Mh.L.J. (Cri.) 434** on the point that when there are multiple dying declarations, the prosecution cannot pick and choose.

(vii) The Judgment in the matter of ***Datta Patil vs. State of Maharashtra***, on the point of conviction based upon two dying declarations, there was no eye witness to the incident. The first dying declaration creates doubt since it has thumb impression of deceased. However, hands were completely burnt. The contents of second dying declaration were not read over to the deceased before taking his signature, therefore, the dying declarations can not be relied upon to rest conviction.

(viii) ***Ganpat Bakaramji Lad Vs. State of Maharashtra, (Criminal Appeal No. 186 of 2013)*** wherein the Full Bench of the Bombay High

Court has answered the question of reference that the dying declaration cannot be rejected merely because the same is not read over to the declarant and admitting the same to have been correctly recorded, have further held dying declaration not read over can be one of the factors which assumes significance in the facts and circumstances of the case.

33. On the other hand, the learned APP for the State also relied upon the judgment report in the matter of ***State of UP vs. Veerpal, (2022)4 SCC 741*** on the point of multiple dying declaration and necessity of corroboration, wherein, the Honourable Supreme Court held that it is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration.

Another judgment relied upon by the APP is ***Puran Chand Vs. State of Haryana, (2010) 6 SCC 566*** laying down the principles to be considered in the cases of multiple dying declarations.

34. We have considered the submissions made by the learned counsel for appellants and the learned APP for State and have gone through the evidence and record with their assistance. The initial reporting of the incident is recorded in the IPD papers Exh.67 wherein, history is noted as Accidental Burns on 25.3.2017 at home, given by the patient herself. The said noting in the IPD papers at 11.30 a.m. on the date of incident i.e. 25.3.2017 is an important piece of evidence, which is corroborated by the evidence of Dr. Pushpa Narote (DW-1), who had clearly stated to have taken those entries on the say of Ganesh Kotkar, PW-3, husband of the deceased and the further history noted in entry is taken on the say of victim that she had sustained burn injuries due to explosion of stove while working. The said fact of accidental burns history is also corroborated by PW-8 Dr. Supriya Jagtap as per the IPD papers.

35. The cross examination of said witness DW-1 Dr. Pushpa by the learned APP, did not shatter her evidence pertaining to Exh.67 and as such, this important piece of evidence could have been taken into consideration by the learned trial court. The said entries in IPD papers noted by Dr. Pushpa Narote, who had no axe to grind on the victim or her relatives creates a dent in the prosecution story and even puts the two dying declarations under suspicion. Moreover, the said important witness was not examined by the prosecution and the IPD papers dated 25.3.2017, showing history of Accidental Burns are suppressed.

36. The further suspicious circumstance is the inquest panchanama and the panch on inquest, who specifically states about both the hands and legs being completely burnt. Though the percentage of burns is stated to be 83 %, it can be seen from the testimony of PW-1, the panch on inquest, the inquest panchanama and the Post Mortem report that the entire hands and legs of the deceased were burnt. The cross examination of Dr. Shrikant Pathak, who had conducted the Post Mortem would show that he did not notice any ink on the thumb as well as limb of the deceased. The PW-1 (Pancha on inquest) in cross examination states that both the hands and legs were totally burnt including all fingers and that the skin of both hands and legs were hanging. It is further stated by PW-1 (Pancha on inquest) Sharad Pawar that he did not find any ink on the finger of hands and legs of the dead body. It is apposite to make a reference to the judgment of the Hon'ble Supreme Court in the matter *State of Punjab vs Gian Kaur (supra)* , wherein, in an identical situation, ridges and curves on thumb impression of the deceased appearing in dying declaration was held to be doubtful in view of the burn injuries sustained by deceased.

37. The important evidence which also deserves consideration is the role of PW-2 Baban Japkar, who is the real brother of deceased, had turned hostile and did not support the case of the prosecution. Even after cross examination of the said witness by learned APP, there was nothing brought on record to show that there was any oblique motive on the part of PW-2 to turn hostile and not to support the prosecution case. The real brother of deceased Ranjana - Baban Japkar (PW-2) has categorically made a statement in his cross-examination that the deceased Ranjana had disclosed to him that she was burnt due to explosion of stove. PW-2 Baban (real brother of deceased) has further stated that accused Ramdas returned to the house on that day in the evening as he was working as a driver. This admission on the part of real brother of the deceased creates a serious doubt about the prosecution story and brings the dying declarations under the clouds of suspicion.

38. PW-3 Ganesh Kotkar (husband of deceased) who had initially recorded the history in the IPD papers with Dr. Pushpa Narote, had also categorically stated in his cross-examination that the accused Ramdas is driver by profession and on the date of incident, he was in Supa. He had further stated that on the date of incident, he and his father extinguished the fire. He has further stated that the partition of the family property was already undertaken six years ago and that there was no dispute between him and the accused on account of the property. Both these witnesses were declared hostile by the prosecution as they resiled from their earlier statements.

39. Thus, there is no corroborative evidence so as to inspire confidence about the truthfulness and veracity of the dying declarations of the deceased. Thus, it would be totally unsafe to rely upon the uncorroborated evidence of the dying declarations particularly when there are also doubts created about the manner of recording of the dying

declarations and about the hands and legs of the deceased being completely burnt.

40. Another doubtful factor or circumstance is in respect of recording of dying declaration by Special Judicial Magistrate Mr. Jayant Joshi, who has recorded dying declaration by giving requisition to doctor PW-9, Joshi had received requisition of ASI Jagtap at 7.00 p.m. at home, reached Civil Hospital at Ahmednagar and gave requisition to Dr. Jagtap at 7.05 p.m. and started recording dying declaration at 7.15 p.m., Thus, the timing appearing on aforesaid Exhibits, therefore, creates serious doubt about the recording of the dying declaration.

41. The next circumstance is that the post mortem report does not show any signs of struggle on the dead body of deceased if the allegations of forcible pouring of kerosene putting deceased on fire are to be accepted. The absence of any injuries referring to the struggle made by the deceased, creates a doubt in the prosecution story.

42. Another significant factor to create a doubt about the dying declarations is the absence of examination of neighbours, who are residents of nearby vicinity. The same is considered as one of the important factors which has been relied by the Division Bench of this Court in the matter of **Sk. Gulab vs. State of Maharashtra**, wherein, the Division Bench of this Court has held as under :-

“27.If the neighbours had rushed to the spot after hearing the shouting, they would have definitely noticed present appellant in the vicinity if he was there. Due to absence of evidence of neighbours, it is not possible to believe that present appellant was also present at the relevant time.”

43. The Dying Declaration Exh.46 states that the neighbours had rushed to the spot of incident after hearing of shouts. Thus in the absence the evidence of neighbours, it is not possible to believe that the present appellants were also present at the relevant time on the spot of incidence of mere responsible for causing burn injuries to the deceased, particularly, when the dying declarations are found to be doubtful.

44. Considering the judgment reported in the matter of *Ganpat Bakaramji Lad vs. State of Maharashtra (Criminal Appeal No. 186 of 2013- Nagpur Bench)* the Full Bench of this Court was of the opinion that if the contents of the dying declaration were not read over to the declarant, the said factor can assume significance in a given case. Neither PW-9 Shri Joshi nor PW-6 ASI Raje, who had recorded the two dying declarations have stated in their deposition that they have read over the contents to the declarant. In the absence of same, considering the judgment in the matter Ganpat, the said factor of not reading over assumes significance in the facts of the present case, wherein, the dying declarations are doubtful. The accused have examined Defence Witnesses and brought their case within preponderance of probabilities.

45. For the reasons aforesaid, the evidence led by the prosecution is not sufficient enough to rest conviction of the appellants. . We, thus, find that prosecution has not been able to establish offence against the appellants beyond reasonable doubt. The conviction of the appellants for the offence punishable under Section 302 r/w. 34 of IPC, therefore, deserves to be quashed and set aside.

46. In the result, the Criminal appeals No. 313 and 314 of 2019 filed by the appellants are allowed. The impugned judgment dated 28.11.2018 is quashed and set aside. The conviction of the appellants for the offence punishable under Section 302 r/w. 34 of IPC, in Crime No.

151 of 2017, registered with Kotwali Police Station, Ahmednagar is hereby quashed and set aside. The appellants are acquitted of the aforesaid offence.

Since the accused No.1 Ramdas is in jail, he be set at liberty forthwith, if not required in any other offence. The bail bonds of the appellants stand cancelled. Fine amount, if any, deposited be refunded to them.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE.

grt/-