



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

CRIMINAL APPEAL NO. 227 OF 2004

The State of Maharashtra
Through Rohini w/o Chandrakant
Sangapal, R/o Newasa Khurd

... APPELLANT
(Ori. Complainant)

VERSUS

Chandrakant Ramdas Sangapal
Age: 24 years, R/o. Newasa Khurd,
Tq. Newasa, District Ahmednagar

... RESPONDENT
(Ori. Accused No.1)

....

Ms B. B. Gunjal, APP for the Appellant
Mr. V. D. Sapkal, Senior Advocate a/w Mr. Atharva D. Khedkar,
Advocate for the Respondent – sole

....

**CORAM : SANDIPKUMAR C. MORE AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 25.11.2025
PRONOUNCED ON : 09.12. 2025**

JUDGMENT (PER: Y. G. KHOBRAGADE, J.) :-

1. By the present appeal, the prosecution questioned the legality and validity of judgment and order dated 20.11.2003, passed by the learned 1st Ad-hoc Additional Sessions Judge, Shrirampur, in Sessions Case No.15 of 2000, whereby the

respondent/accused is acquitted for the offence punishable under Sections 498-A, 302 read with 34 of I.P. C. in Crime No.236 of 1999, registered with Newasa Police Station.

2. It is the case of prosecution that, on 14.12.1998, the marriage of deceased Rohini was solemnized with accused No.1. Accused No.2 is the mother-in-law and accused No.3 is sister-in-law of the Smt. Rohini (deceased). The prosecution alleged that at the time of settlement of marriage between accused No.1 and deceased Rohini it was decided that the parents of deceased Rohini should pay the amount of Rs.17,000/- to the accused towards dowry, however, at the time of marriage, PW2 (Manohar Bhaurao Pawar), the father of deceased paid only an amount of Rs.10,000/- and promised to pay remaining amount. However, after 15 days of marriage, the accused persons raised demand of balance amount of dowry against the deceased Rohini, hence, the deceased Rohini had sent message to her parents, but at that time they gave understanding to the accused. Subsequently, the accused no. 1 had visited the parental house of the deceased, but at that time also PW2, father of the deceased failed to give said amount.

3. On 25.11.1999, in morning time, when the deceased Rohini was preparing meal at her matrimonial house, at that time, the accused No. 1 poured kerosene on person of Rohini and set her fire. Rohini sustained burn injuries and she was admitted at Civil Hospital, Ahmednagar. The Special Executive Magistrate was summoned for recording dying declaration of said Rohini. Accordingly, the Special Executive Magistrate (PW3) visited burn ward of the Hospital and recorded dying declaration of Rohini at Exh.33, wherein, deceased stated that, when she was preparing meal her husband (Accused No.1) poured kerosene on her person and set her on fire and then he went out of the room and told her mother-in-law and sister-in-law about setting her fire due to non payment of Rs.7,000/-. On the basis of said dying declaration a Crime No.236 of 1999 was registered against the Respondent/original accused No. 1 and his mother as well his sister namely accused nos. 2 & 3 respectively for the offences punishable under Section 498-A, with Section 34 of the I.P.C. However, during the course of hospitalization, the injured Rohini succumbed to the burn injuries on 30.11.1999. Therefore, offence punishable under Section 302 of I.P. C. was added in Crime No.236 of 1999. Accordingly, the Accused nos. 1 to 3 were tried.

4. PW7 Shri Suresh Haribhau Raut, ASI and PW9 Dhanraj Gopalrao Walunjkar, Police Inspector attached with Newasa Police Station conducted investigation and after collecting substantial evidence, filed charge-sheet against the accused nos. 1 to 3 for the offences punishable under Sections 498-A, 302 read with 34 of I.P. C. before the learned J.M.F.C., Newasa. Since the offence punishable under Section 302 of I.P.C. is exclusively triable by the Court of Sessions, therefore, on compliance of Section 209 of Cr.P. C., the trial was committed to the Court of Session.

5. On 05.07.2003, the learned trial Court framed the charge Exh.6 against the accused persons for the offence punishable under Sections 498-A, 302 read with 34 of the I.P. C. The Accused pleaded not guilty and claim for trial. On 20.11.2003, the learned 1st Ad-hoc Additional Sessions Judge, Shrirampur passed the impugned judgment and order in Sessions Case No.15 of 2000 and acquitted all the accused from the offence punishable under Sections 498-A, 302 read with 34 of I.P. C. in Crime No.236 of 1999. However, the present appeal against acquittal is restricted only to extent of original accused No. 1 husband of the deceased/sole Respondent.

6. In order to bring the home guilt of the accused, the prosecution examined following witnesses:-

Sr. No.	Name	Exh.No.
1.	PW1 Ankush S. Gaikwad, the panch witness	11
2.	PW2 Manohar Bhaurao Pawar, the father of deceased Rohini	12
3.	PW3 Ravishankar Murlidhar Deolalikar, Special Executive Magistrate, who recorded dying declaration of deceased Rohini at Exh.33	16
4.	PW4 Changdeo Kundlik Zarekar, the relative of PW2	19
5.	PW5 Dr. Urmila Rajendra Todmal, in whose presence the Special Executive Magistrate recorded the statement of deceased Rohini	21
6.	PW6 Dr. Ashok Tulshiram Ghule, who conducted the Postmortem of dead body of deceased	26
7.	PW7 Suresh Haribhau Raut, ASI (Investigating Officer)	28
8.	PW8 Dr. Sandhya Deorao Chavan (Medical Officer, Ahmednagar)	34
9.	PW9 Dhanrao Gopalrao Walunjkar, I.O.	36

7. Besides oral evidence, the prosecution proved the following documentary evidence:-

Sr. No.	Particulars of document	Exh.No.
1.	Inquest panchanama dated 30.11.1999	13
2.	Sketch map of the scene of offence	15A
3.	Postmortem report	27
4.	Spot panchanama	29
5.	Letter dated 27.11.1999 issued by Police Station,	30

	Newasa to Special Executive Officer, for recording dying declaration of the deceased	
6.	Letter dated 27.11.1999 issued by the P.S.I., Newasa for recording dying declaration of the deceased	31
7.	Dying declaration dated 27.11.1999	33
8.	Letter dated 28.11.1999 issued by the A.S.I. Newasa Police Station to the Medical Officer	37
9.	Arrest panchanama of accused	38
10.	Request letter dated 28.11.1999 issued by A.S.I. to the Tahsildar for drawing sketch map of spot of incident	39
11.	Request letter dated 27.12.1999 issued by the A.S.I., Police Station, Newasa to the Chemical Analysis, Aurangabad for examination of seized and referred articles for chemical examination	40
12.	Chemical Analysis report dated 19.07.2000	41
13.	Request letter dated 25.11.1999 issued by P.S.I., Newasa Police Station for recording dying declaration of the deceased	42

8. After the evidence is closed by the prosecution, the statements of accused was recorded under Section 313 of Cr.PC. The defense of the accused is that the deceased was preparing food on stove at about 9.00 a.m. on 25.11.1999 and while preparing the food, the stove all of a sudden exploded, due to which the saree of the deceased came in contact of flame and she burned. At that time, the accused No.1 was taking bath and after hearing shout, he rushed to the deceased and doused fire by pouring water and he admitted the deceased in hospital for treatment. So also, while dousing the victim

the accused sustained burn injuries. Therefore, they have not committed crime. In order to prove the defense, the prosecution examined DW-1 Ashok V. Bhor, the Special Executive Officer at Exh.47 and D.W. 2 Dr. Ashok Shankarrao Zarekar at Exh. 49.

9. The learned APP canvassed that P. W. 2 Mr. Manohar Pawar, the father of deceased deposed at Exh.12 that the marriage of his daughter Rohini solemnized on 14.12.1998 with accused No.1 Chandrakant and before marriage, dowry amount of Rs.17,000/- was fixed, but at the time of marriage, only an amount of Rs. 10,000/- was paid and an amount of Rs.7,000/- was remained to be paid. After 15 days of the marriage, the accused Nos. 1 to 3 started demanding remaining amount of dowry from the deceased Rohini. Though the accused were given understanding by him, but the accused set her on fire, due to which his daughter Rohini succumbed. In cross examination, PW2 admitted that prior to settlement of marriage, Rohini had selected the accused for marriage. PW2 further admitted that, prior to the settlement of the marriage, Rohini was with Accused No. 1. He knew the accused and his family members to be of good nature. The marriage of his daughter Rohini, was settled with accused No.1 as per her wish.

10. The PW3 Special Executive Magistrate Shri Ravishankar Murlidhar Deolalkikar deposed at Exh.16 that, on 27.11.1999, at 5.30 p.m., he received memo from Newasa Police Station for recording dying declaration of one lady, who was admitted in Civil Hospital, Ahmednagar due to burn injuries. Thereafter, he visited the Civil Hospital and informed the lady Medical Officer (PW5) and shown his willingness for recording statement of the burnt patient. Thereafter, he himself and the Medical Officer (PW5), visited the burn ward of the hospital and he asked the relatives of the patient Rohini to go outside the ward and after disclosing identification, he recorded dying declaration of the patient Rohini. The doctor examined the patient Rohini and made endorsement about fitness of the declarant to give her statement. PW3 further deposed that the patient gave her statement that, she was residing at Newasa and in answer to the question about how she sustained burn injuries, Rohini told him that, when she was preparing meal, her husband (Accused No. 1) poured kerosene on her person and set her on fire then he went out of the room by latching the door from outside and told her mother-in-law and sister-in-law about setting her on fire. The deceased Rohini further stated him that, on demand of amount of Rs.7,000/-, she was

burned and her husband did not extinguish fire. She sustained burn injuries on her stomach, neck, both hands and legs so also back. Accordingly, he (PW3) reduced dying declaration as per say of the declarant and obtained endorsement certifying correctness of the declaration from the Medical Officer and also about consciousness of the declarant.

11. In cross examination, PW3 Special Executive Magistrate admitted that he does not know english and he reached at the hospital at 5.30 p.m. At the time of recording the statement, the declarant Rohini was alone and no others were present. The Medical Officer had examined the patient Rohini then he started recording statement of the patient and completed it at about 6.30 p.m.. The Medical Officer had medically examined the patient Rohini and while recording the dying declaration, Rohini was lying on the bed and did not inform him about recording her previous statement. Accordingly, he recorded dying declaration Exh.33.

12. The learned Senior Advocate Mr. V. D. Sapkal appearing for the respondent accused canvassed that as per the evidence of DW1 Ashok, the Special Executive Magistrate recorded first dying declaration in between 3.35 p.m. to 3.55 p.m. on 25.11.1999 after

complying necessary requirement. The patient Rohini (deceased) made a statement that, when she was cooking food on Stove at that time all of sudden the stove was exploded and her saree came in contact with fire and when she shouted at that time, her husband accused No.1 was taking bath. After hearing shout, the Accused no. 1 rushed to the deceased and doused the fire by poring water. Thereafter, the no. 1 brought the victim to the hospital for medical treatment, which shows subsequent conduct of the Respondent/accused. However, subsequently on 27.11.1999, PW2 Manohar Pawar, the father of victim and his relatives made request to the concerned Investigation Officer for recording another statement of the victim because they were not agree with the contents of first dying declaration. Therefore, the A.S.I. PW7 issued letter Exh.31 on request of victim's parents and directed the PW3 Deolalikar, Special Executive Magistrate for recording another dying declaration Exh.33, which is inconsistent with first dying declaration Exh. 48. Therefore, 2nd dying declaration Exh. 33 is not trustworthy, reliable. The learned trial court properly well considered evidence available on record and acquitted the respondent/accused, hence, prayed for dismissal of the appeal.

13. Mr. Sapkal, the learned senior counsel appearing on behalf of the respondent accused placed reliance on the case of ***Smt. Meerabai Rangnath Shriram Vs. State of Maharashtra, 2006 ALL MR (Cri) 138***, wherein, it has been held thus:-

“It is well settled position in law that conviction could be sustained on the basis of a sole dying declaration, if the same is voluntary and truthful. In case of a multiple dying declaration certain tests have to be applied to consider its acceptability. In plurality of the dying declarations, all such statements have to be consistent regarding the date, time, person involved and the manner in which the incident took place. Though a dying declaration is acceptable in evidence u/s 32(1) of the Evidence Act, same being an exception to the principle that hearsay statement is not admissible in evidence, but at the same time, the court has to be conscious and circumspect while considering the acceptability of the dying declaration, in absence of any corroboration. At the same time, if the dying declaration, on its own, inspires confidence of the court, by placing reliance on the same, conviction could be sustained.”

14. He further relied on case of ***Mehibbobsab Abbasabi Nadaf-Vs- State of Karnataka, 2007 Cri. L.J. 3737***, wherein the Hon'ble Supreme Court held that, the dying declaration can be made basis for conviction. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In the cited case, the deceased herself had taken contradictory and inconsistent stand in irreverent dying declarations. They, therefore, should not be accepted on their face value.

15. Per contra, the learned APP placed reliance on the case of *Mehiboobsab Abbasabi Nadaf V. State of Karnataka, 2007 CRI. L. J. 3737*, wherein, the Hon'ble Supreme Court held that conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. However, if the multiple dying declarations are contradictory and inconsistent they should not be accepted on their face value.

16. Having regard to the submissions canvassed on behalf of the appellant prosecution as well on behalf of the Respondent Accused, we have gone through the record. The respondent accused has not denied the spot cum seizure panchanama Exh. 29, and FSL Report Exh.41. On perusal of evidence of the prosecution witnesses as well as the evidence of Medical Officer PW6, it is evident that death of the deceased Rohini caused due to 100% superficial deep infected burns and said fact not denied by the Respondent-accused.

17. The case in hand totally rests on two dying declarations, out of which one dying declaration Exh. 33 recorded by the PW3

Ravishankar Murlidhar Deolalikar, Special Executive Magistrate on 27-11-1999 and another dying declaration Exh. 48 recorded by the Defense Witness no. 1 Shri Ashok Vitthalrao Bhor on 25-11-1999.

18. PW 5 Dr. Urmila Rajendra Todmal, the Medical Officer attached with Ahmednagar Civil Hospital, deposed at Exh.21 that, on 25.11.1999, at about 3.00 p.m., the police visited at C.M.O. office along with Special Executive Magistrate Shri Deolalikar (PW3), therefore, on his request, she visited the burn ward and examined the burned patient Rohini. At that time the patient was found in conscious state. Therefore, she made endorsement to that effect and put signature at Exh.22. Thereafter, PW3 Ravishankar Murlidhar Deolalikar, recorded statement of the patient and after statement was over, she put her endorsement at the bottom of dying declaration dated 27.11.1999 Exh.27.

19. In cross examination, PW5 Medical Officer admitted that on 25.11.1999, Mr. Ashok Bhor, the Special Executive Magistrate (DW1) visited in her cabin and prior to recording dying declaration, she had examined the patient Rohini and find that Rohini was in conscious state of mind and fit to give her statement. Thereafter, DW1 Shri Ashok Bhor, the Special Executive Magistrate, recorded

statement of deceased Rohini and during the course of recording statement, the patient Rohini was in fit state of mind and conscious. So also, after recording dying declaration (Exh. 48) by the Special Executive Magistrate Ashok Bhor (DW1), she again examined the patient Rohini and patient was conscious, hence, she put endorsement at the bottom of dying declaration Exh.48.

20. PW8 Dr. Sandhya Deorao Chavan, examined at Exh.34. She deposed that, on 27.11.1999, she was discharging duty at Civil Hospital from 9.00 a.m.. On 27.11.1999, Rohini (deceased) was hospitalized due to burn injuries and that day, at about 5.30 to 6.00 p.m., the Special Executive Magistrate Devlalikar (PW3) visited the hospital for recording dying declaration of Rohini. Thereafter, on say of PW3, she and her staff members with PW3 Shri Devlalikar, visited the patient Rohini in the burn ward and examined her. Thereafter She put endorsement about fitness of the declarant to give her statement. Thereafter, PW3 Special Executive Magistrate recorded statement of patient Rohini. PW8 stated that prior to and after recording the statement, patient Rohini was conscious and in condition to give her statement to PW3 at about 6.00 p.m. So also, after recording the statement, she put her signature at bottom of dying declaration.

21. PW3 Ravishankar Murlidhar Deolalikar, the Special Executive Magistrate recorded the dying declaration Exh.33 of the deceased Rohini at about 6.20 p.m. on 27.11.1999, wherein she stated that, when she was cooking food, at that time, her husband accused No.1 poured the kerosene on her person and set her on fire and left by saying her mother-in-law and sister-in-law that he had set her on fire because of non fulfillment of balance dowry amount of Rs.7,000/-.

22. In order to prove defense and recording of first dying by the Special Executive Magistrate Shri Ashok Vitthalrao Bhor on 25-11-1999, the Respondent/accused examined him at Exh. 47. The D. W. 1 deposed that, on 25.11.1999, he received a letter from Tophkhana Police Station, Ahmednagar requesting him for recording statement of the burn patient who was hospitalized in Civil Hospital at Ahmednagar. Therefore, he visited said hospital and met with the Medical Officer (PW5). Thereafter, he along with the Medical Officer PW5, visited in burn patient ward. He directed all relatives of the patient to go out of said ward. Thereafter the Medical Officer PW5 examined the patient and made endorsement (Exh.24) that, the

patient was in conscious and fit to give her statement. Thereafter, he recorded statement of declarant in question answer form at Exh.48. DW1 further deposed that after he recorded the declaration, the Medical Officer again examined the patient Rohini and made endorsement at the bottom of Exh.48 about consciousness of patient. DW1 further deposed that he started recording dying declaration from 3.35 p.m. and finished at about 3.55 p.m.

23. Therefore, taking into consideration the evidence of P. W. 5 Medical Officer, D.W.1 Special Executive Magistrate, P.W.3 Special Executive Magistrate and P. W. 8 Medical Officer, it reveals that DW1 Shri Ashok Vitthalrao Bhor, the Special Executive Magistrate firstly recorded dying declaration Exh.48 two days prior to recording dying declaration by PW3 the Special Executive Magistrate Shri Ravishankar Murlidhar Deolalikar at Exh. 33. However, the prosecution concealed dying declaration Exh.48.

24. On the face of record it *prima facie* reveals that, one Dying declaration i. e. Exh. 33 was recorded by the P. W. 3 Shri Ravishankar Deolalikar on 27.11.1999 at about 6.30 p.m.. The another Dying declaration Exh. 48 recorded by the defense witness (DW1) Shri Ashok Bhor, on 25.11.1999 at about 3.55 p.m., after

complying necessary requirement. However, 2nd Dying declaration Exh. 33 is recorded by the P.W. 3 Ravishankar Murlidhar Deolalikar, Special Executive Magistrate, on 27.11.1999, at about 6:25 p.m., after two days from date of admission of the patient.

25. On perusal of dying declaration Exh.33 it appears that, when the deceased was cooking food, her husband (Accused No. 1) poured kerosene on her person and set her on fire and then gone out of the room by putting latch on the door from outside and told his mother (Accused no. 2) and sister (Accused No. 3) about setting her fire and he did not extinguish fire. She sustained burn injuries on her stomach, neck, both hands, legs and back.

26. In first dying declaration Exh.48, the declarant Rohini made a statement that, on 25.11.1999, when she was cooking food on stove, at that time, all of sudden, the stove was exploded and her Saree came in contact with fire. She tried to save herself but in vain, therefore, she raised shouts and at that time, her husband accused No.1 was taking bath. When her husband (Accused no. 1) reached to her by that time her saree was ablazed, due to which, she (Rohini) sustained burn injuries. Then she was admitted at Civil Hospital, Ahmednagar.

27. Thus, both these dying declarations are not consistent. So also, the Dying Declaration Exh. 33 came to be recorded by the P. W. 3 after two days from admission of the patient because the parents of the deceased were not agree with first dying declaration Exh. 48 and on their request the P. W. 7 ASI Shri Suresh Raut issued request letter Exh. 31 on 27.11.1999 requesting the P. W. 3 Special Executive Magistrate for recording Statement of the burned patient. Accordingly, the P. W. 3 recorded dying declartion Exh. 33, which does not appear voluntary and truthful.

28. In order the prove injuries sustained the Accused no. 1/Respondent no. 1, the defense examined the Medical Officer DW2 Dr. Ashok Shankarrao Zarekar at Exh. 49. The D.W. 2 stated that, he examined the accused No.1 Chandrakant Ramdas Sangapal and following injuries are noticed on his person:-

- (i) Burn on left arm lateral aspect 6 cm x 4 cm;
- (ii) Burns on left forearm dorsal aspect 7 x 4 cm;
- (iii) Burns on left palm 3 x 2 cm;
- (iv) Burns on left little finger at tip 2 x 1 cm;
- (v) Burns on left ring finger at tip 2 x 1 cm.

29. As per the evidence of Medical Officer PW4 Dr. Ashok Ghule, the deceased Rohini was having 100% burn injuries and opined that the death of deceased due to septicemia due to superficial

deep infected burns. Whereas the DW2 Dr. Ashok Shankarrao Zarekar, he examined the accused No.1 Chandrakant Ramdas Sangapal and found burn injuries to the accused. Therefore, it shows that, the accused had tried to save the victim by pouring water, which *prima facie* supports the defense of the Respondent/accused. If the Respondent accused could not have tried to save the victim, he would not have received the burn injuries. As per the dying declaration Exh.48, the injured had come in contact of fire when she was cooking food and the respondent No.1 accused doused the fire and admitted his wife in the hospital. Therefore, defense of the Respondent/Accused appears to be probable and *bona fide*.

30. On 20.11.2003, the learned trial Court passed the impugned order holding that, on 25.11.1999 in morning time, Rohini (deceased) had sustained burn injuries and on the same day, she was admitted in Civil Hospital, Ahmednagar. The dying declaration Exh.33 allegedly recorded on 27.11.1999 and there are overwriting in respect of date and said dying declaration Exh.33 was not recorded immediately on admission of deceased Rohini. However, the evidence of DW1 shows that on 25.11.1999 at about 3.35 hrs. to 3.55 hrs., the dying declaration Exh.48 was recorded. Therefore, as per recital of dying declaration Exh.48, due to sudden high flame of stove, the

deceased Rohini sustained burn injuries and the said fact disclosed while recording her declaration. The Exh.48 dying declaration indicates about putting endorsement by the Medical Officer at the top and at the bottom, certifying that while recording statement, Rohini (deceased) was in conscious state of mind and able to give her statement. The dying declaration Exh.48 further disclosed about obtaining thumb impression of the declarant and her signature and seal of DW1. Therefore, the prosecution failed to prove the fact beyond reasonable doubt that the respondent accused committed the offence under Section 302, 498-A read with Section 34 of I.P.C. Thus, findings recorded by the learned trial court are based on proper appreciation of the evidence. In view of above discussion, we do not find any substantial ground to interfere with said findings. Therefore, the present appeal deserves to be dismissed. Accordingly, we proceed to pass the following order:-

ORDER

- (i) The appeal is dismissed.
- (ii) Record and proceedings be remitted back to the trial Court.

[Y. G. KHOBRADE, J.]

[SANDIPKUMAR C. MORE, J.]

SMS