

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 65 OF 2017

Gopal Madhu Pawar
Resident of Bhirampada, Post Nadsud,
Taluka Sudhagad, District Raigad
(presently in Yerwada Central Prison, Pune). ...Appellant

Versus

The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO. 2080 OF 2025
IN
CRIMINAL APPEAL NO. 65 OF 2017

Gopal Madhu Pawar ... Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Yashodeep Deshmukh a/w Vaidehi Deshmukh, for the
Appellant/Applicant.

Mr. K. V. Saste, Addl. PP, for the Respondent-State.

CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

RESERVED ON: 1st AUGUST, 2025.
PRONOUNCED ON: 26th AUGUST, 2025.

JUDGMENT : (Per *SUMAN SHYAM, J.*)

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1. The instant appeal arises out of the judgment and order dated 22nd September, 2013, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 28 of 2013, whereby the sole Appellant (accused) was convicted under Section 302 of the Indian Penal Code ('IPC'), for committing the murder of his wife- Bharati and sentenced to undergo life imprisonment and also to pay fine of Rs.1,000/-, in default, rigorous imprisonment for one year.

2. The prosecution case, as unfolded from the material available on record, is to the effect that the appellant (accused) Gopal Madhu Pawar was in the habit of drinking alcohol on regular basis. On 29th August, 2012, the appellant had asked his wife Bharati to give her *mangalsutra* apparently for selling the same so as to consume alcohol. It was around 2:00 p.m. in the afternoon and at that time, the appellant was present in his house alongwith his wife Bharati. Responding to the demand to hand over the *mangalsutra* made by the appellant, his wife Bharati had asked him not to sell the same. On that, the accused got annoyed. He poured kerosene on the person of his wife Bharati and set her on fire. When Bharati raised a hue and cry and came running out of her house, her relative Shakuntala (PW-6) and the appellant took Bharati to the Nagar Palika Hospital, at Lonavala, by a rickshaw. The hospital, however, refused to admit Bharati. As such, the cousin of Shakuntala, viz. Bhiva Pawar took Bharati to her parents house at Unere. Later on, upon receipt of information about the incident, the SHO of Pali Police Station took Bharati to

the Primary Health Centre at Pali by the police jeep wherein, she was admitted. Dr. Jaiswal (PW-4) examined the injured-victim. Her statement was recorded by PW-3 Mr. Kokate, after being certified by the doctor that the victim was in a fit state of mind to record her statement. Within minutes thereafter, the Executive Magistrate Mr. Vetkoli (PW-5), on receiving the requisition from the SHO of Pali Police Station, came to the hospital and recorded the statement of Bharati after obtaining the opinion of the doctor about her state of mind. The statements recorded by the PW-3 and PW-5, on the same day, within a gap of about 20 minutes, have been treated as dying declarations of the victim. The victim died in the hospital on 1st September, 2012. On 2nd September, 2012, the accused was arrested and the *mangalsutra* was seized from him. Initially, although C.R. No. 89 of 2012 was registered under Section 307 of the IPC, later on, Section 302 of the IPC was added. On completion of investigation in connection with C.R. No. 89 of 2012 of Pali Police Station, the Investigating Officer, i.e., PW-10 had submitted charge-sheet against the accused, based on which, charge was framed against him under Section 302 of the IPC. On conclusion of trial, the learned Additional Sessions Judge had convicted the appellant under Section 302 of the IPC for committing the murder of his wife Bharati and sentenced him as aforesaid.

3. The prosecution case is based on circumstantial evidence. The two dying declarations (Exh. 16) and (Exh.26), were pressed into service by the prosecution so as to secure the conviction of the

appellant. Taking note of the facts and circumstances of the case, the seized articles, including the bottle where kerosene was found as well as the two dying declarations of the victim, the learned trial Court had convicted the appellant for committing offence punishable under Section 302 of the IPC.

4. Assailing the judgment and order dated 22nd September, 2013, Mr. Yashodeep Deshmukh, learned appointed Advocate appearing for the appellant, has argued that the conviction of the appellant in this case is solely based on the dying declaration of the victim without there being any corroborative evidence to support the prosecution case. Contending that conviction solely based on the dying declaration, is unsafe, Mr. Deshmukh has further argued that the statements of the victim do not record the date and time when the same were recorded and, therefore, creates a genuine doubt as to circumstances under which the alleged dying declarations had been recorded.

5. The alternate argument of the learned Counsel for the appellant is to be affected even if it is held that the appellant is responsible for the homicidal death of his wife, even then, having regard to the evidence available on record suggesting that a quarrel between the appellant and his deceased wife had preceded the incident, the present is a case coming within the ambit of Exception No. 4 of Section 300 of the IPC. He submits that there was no intention to cause death to the victim as the appellant had himself tried to douse the fire and also took the

victim to the hospital. As such, the conviction of the appellant, according to Mr. Deshmukh, can at best be under Section 304 part II and no further.

6. Responding to the above arguments, Mr. K. V. Saste, the learned Addl. PP appearing for the State, has argued that the conviction of the appellant is based on the two dying declarations which are mutually consistent and had been recorded after adhering to all the necessary safeguards. That apart, the other evidence brought on record go alongwith the version given by the deceased in her dying declaration. Under such circumstances, it cannot be said that conviction of the appellant was entirely based on the dying declaration of the victim. In support of his above argument, Mr. Saste has relied upon **Poonam Bai vs. State of Chhattisgarh**¹ as well as **Jagbir Singh vs. State (NCT of Delhi)**² to submit that conviction on the basis of dying declaration alone is permissible under the law.

7. We have considered the arguments advanced at the bar and have also meticulously gone through the evidence available on record. From the evidence brought on record, it appears that the incident took place on the afternoon of 29th August, 2012, inside the house of the appellant and the deceased. The sequence of events after his daughter Bharati was brought to his house after the incident have been deposed by Shimgya Kunya Hilar,

1 (2019) 6 SCC 145

2 (2019) 8 SCC 779

i.e., the father of the victim, who was examined as PW-1 (Exh.12). In his deposition, PW-1 has stated that the deceased was his daughter. She was married to the accused, out of which two sons were born. The accused was in the habit of drinking liquor. After the incident, the neighbours of Bharati brought her to his residence in a burnt condition. Thereafter, injured Bharati was taken to the Rural Hospital, Pali, by the police, in a police vehicle. At that time, Bharati was in a condition to speak. Police had recorded her statement. Thereafter, Bharati was referred to Civil Hospital, Alibaug. On 31st August, 2012, Bharati died in the hospital while undergoing treatment. This witness has further stated that his daughter had disclosed to him that the accused had poured kerosene on her person and set her on fire. During his cross-examination, PW-1 has stated that he had not disclosed the version given to him by his daughter to the police on 17th September, 2012. But when Police recorded his statement later on, he had disclosed his daughter's version to the police. The witness has further stated that one Bhiva and Shakuntala had brought Bharati to his house in an injured condition. Bhiva is the brother of appellant. The witness could not be shaken during his cross-examination.

8. Smt. Chandri Shimgya Hiram is the mother of the victim. She was examined as Prosecution Witness No.2. In her deposition, this witness has also stated that the appellant used to frequently beat her daughter, which fact was disclosed to her by Bharati. She has further deposed that the appellant had taken Bharati's *mangalsutra* and when she opposed, he had poured kerosene on

her person and set her on fire. The doctor at Pali hospital had advised them to take the victim to Civil Hospital, Alibaug, where she died on 31st August, 2012, while undergoing treatment. This witness has remained firm during her cross-examination.

9. PW-3 Shri. Anil Krishna Kokate was attached to the Sudhagarh (Pali), as on duty SHO when information was received from one resident of Unere that a lady has been burnt. He went to the house of Shimgya Hilar, at Unere by the office jeep. On reaching there he found that one lady, viz., Bharati Gopal Pawar, in a burnt condition. He took her to the Rural Hospital, Pali by the police jeep and got her admitted in the hospital. Dr. Jaiswal, the Medical Officer, attached to the Rural Hospital, Pali, was present and he had examined Bharati. The doctor had stated that the victim was in a position to give her statement. Thereafter, in the presence of Dr. Jaiswal (PW-4), he had recorded the statement of Bharati.

10. The witness has further deposed that in her statement recorded by him on 29th August, 2012, Bharati had told that on 29th August, 2012, at about 2:00 p.m. she and her husband Gopal were present in the house. Gopal asked her to give him her *mangalsutra*, which he wanted to sell. She asked him not to sell the *mangalsutra*. At that, Gopal became annoyed and he poured kerosene from a can on the body of the Bharati and set her on fire. Having caught fire, the victim raised hue and cry and came out of the house. At that time, her relative Shakunatala came out of the

house. Gopal and Shakuntala took her to Nagar Palika Hospital, Lonavala, by a rickshaw. After taking Bharati to the hospital, her husband Gopal went away. Her cousin brother-in-law Bhiva Tamdya Pawar and relative Shakuntalabai took Bharati to her parents house at Unere by an ambulance. Police of Pali Station got her admitted in the Government Hospital at Pali and thereafter, in a hospital at Alibaug.

11. PW-3 has further deposed that he had recorded the statement of the victim as per her version and after recording the statement, it was read over to Bharati. She understood the same. He obtained her thumb impression of left hand on it and then he put his own signature. PW-3 has further stated that he had also obtained the endorsement regarding consciousness of the patient and her ability to make statement. The doctor had made endorsement and below the endorsement of the doctor, he had put his signature. The witness has also proved his signature in Exh. 16, which is the statement of the victim recorded as dying declaration.

12. During his cross-examination, PW-3 has stated that he had recorded the statement of Bharati in the Rural Hospital, Sudhagarh. It was his first occasion of recording dying declaration and he was aware of the fact that before recording the statement of patient, certificate of the doctor indicating as to whether, the patient is in a fit mental condition and able to give statement, is required to be obtained. He has, however, denied the suggestion

that after recording the statement of the victim, he went to the doctor and obtained his endorsement.

13. Dr. Bharativinod Dharmendra Jaiswal was the doctor on duty at the Primary Health Centre, Pali, on 29th August, 2012, when the victim-Bharati was brought there in a burnt condition. He was examined as PW-4. This witness has deposed that on 29th August, 2012, at about 10:20 p.m., a patient by the name of Bharati Gopal Pawar was brought to the Primary Health Centre, Pali, by the Pali Police and her relatives. The patient had sustained burn injuries. After providing first-aid to the patient, he advised that the patient be shifted in a higher centre, such as Civil Hospital, Alibaug.

14. PW-4 has also deposed that the police had expressed the desire to record the statement of the victim and for that purpose, had enquired with him as to whether, the patient was in a fit condition to give her statement by issuing communication dated 29th August, 2012, (Exh.19). PW-4 has deposed that he had confirmed the condition of patient after examining her and found that she was conscious and was in a position to record her statement. Accordingly, he had issued a certificate by way of endorsement on the report Exh. 19, which was in his own handwriting and bearing his signature. Thereafter, the police had recorded the statement of Bharati in his presence. After completion of recording of statement, he had again examined the patient and confirmed that she was conscious oriented for her

statement. Accordingly, he had made endorsement on the statement Exh. 19.

15. According to PW-4, the patient had sustained 81% superficial to deep burn injuries and was 'irritable conscious oriented'. He had given antibiotic and TT injection to the patient but has denied the suggestion that the injections contained morphine. He has also denied of having administered any pain killer to the patient. PW-4 has stated that the condition of the patient was serious and, therefore, he had advised the shifting of the patient to a higher center.

16. On his re-examination by the learned APP, PW-4 has stated that on 29th August, 2012, Taluka Executive Magistrate, Pali, came to the PHC for recording the dying declaration of Bharati Pawar. Before recording the dying declaration by the Executive Magistrate, he had examined the patient and found that she was in a fit condition to give her statement. Accordingly, the Executive Magistrate had recorded the statement of the patient and he was present there. After recording the statement of the victim by the Executive Magistrate, he had made an endorsement on it to the effect that the patient was well oriented and conscious to give her statement. The dying declaration (Exh. 26) recorded by the Executive Magistrate bears his signature and endorsement. In his cross-examination, PW-4 has denied the suggestion that due to the burn injuries, the lips of the patient were locked making it impossible for her to talk. He has also denied the suggestion that

he did not examine the patient before recording her dying declaration and rather, he was sitting in his chamber and made an endorsement on the dying declaration in his chamber.

17. Shri. Vishwanath Narayan Vetkoli was the Executive Magistrate (Tahasildar), Tal. Sudhagad, District-Raigad, who had recorded the dying declaration of the victim. He was examined as prosecution witness No. 5. PW-5 has deposed before the Court that on 29th August, 2012, he had received a request from the Pali Police to record the dying declaration of a patient, viz., Bharati Gopal Pawar. The letter received by him (Exh. 25) was identified by the witness. He has deposed that on that day, Bharati Gopal Pawar was admitted in the Primary Health Centre, Pali, having sustained burn injuries. After receiving the requisition from the Pali Police, he had visited the PHC, Pali and met the on duty Medical Officer and informed him about the purpose of his visit. Then the on duty Medical Officer took him to the patient. He made enquiry with the Medical Officer as to whether, the patient was in a position to give her statement. The doctor had informed him that the patient was in a position to give her statement. Therefore, he had recorded the statement of the patient.

18. PW-5 has further deposed that the patient had told him that her name was Bharati Gopal Pawar and she was a resident of Narsur. She had stated that there was a quarrel between herself and her husband. She has further stated that for consuming liquor, her husband had snatched her *mangalsutra* from her person and

when she was trying to take it back, he became annoyed and poured kerosene on her person and set her on fire. The victim had further stated that at that time, she and her husband were the only persons present in the house. There used to be frequent quarrels between them.

19. PW-5 has further stated that he had recorded the statement of the patient in between 10:40 p.m. and 10:50 p.m. After recording the statement of the patient, he had obtained her thumb impression on the statement and also put his signature. Then, he obtained the certificate of the doctor on the statement. The dying declaration recorded by him (Exh. 26) bears his signature and thumb impression of patient- Bharati and he obtained the certificate alongwith the signature of the Medical Officer, Pali. During his cross-examination, PW-5 has denied the suggestion that after recording the dying declaration, he had subsequently obtained the endorsement of the doctor and has stated that the doctor had accompanied him while recording the dying declaration. He had also denied the statement that no statement was given to him by the victim.

20. PW-6 Smt. Shakuntala Balu Valhekar, is a relative of the accused-Gopal, who is his cousin. She was residing nearby the house of the accused and the deceased. PW-6 has deposed that on the date of the incident i.e. on 29th August, 2012, she was present in her house. At that time, she had heard a quarrel between Gopal and his wife. She did not pay much attention to such quarrel.

However, after some time, she had heard loud shouting from the house of Gopal. She came out of her hut and saw that the victim was burning and accused Gopal was trying to extinguish the fire by a country blanket (*ghongadi*). Thereafter, Bharati had asked her to take her to the hospital and accordingly, she, accused-Gopal and her relative Baby Pawar took Bharati to the Government Hospital, at Lonavala. However, the Hospital Authority at Lonavala refused to admit Bharati. As such, Bharati had desired that she be taken to her parents' house. Her husband Balu Valhekar and brother Bhiva came to the hospital. They made arrangements for an ambulance to take Bharati to her parents' house at village Unere. Police had recorded her statement. During her cross-examination, PW-6 has stated that the accused had gone out to make arrangements for an ambulance to take Bharati to Pali but the ambulance was brought by her brother Bhiva in which Bharati was taken to Pali.

21. PW-7 Dr. Sanjay Devram Sadavarte was the doctor on duty attached to the Civil Hospital Alibaug, District-Raigad, on the date on which the dead body of the victim was brought for postmortem. PW-7 has deposed that on 31st August, 2012, at about 2:00 a.m., the patient Bharati Gopal Pawar, who was admitted in the Burn Ward, had died. On that day, in between 8:15 a.m. and 8:40 a.m., he had conducted postmortem examination on the dead body of the deceased. PW-7 has stated that he had put his signature on the postmortem report Exh.34. According to PW-7, there were superficial to deep burn injuries all over the body of the victim except right arm lateral aspect, genitalia, right palm and both feet.

According to PW-7, the victim had suffered 96% burn injuries. The probable cause of death of the victim was due to superficial to deep burn injuries upto 96% with septicemia.

22. PW-8 Shri Vijay Dashrath Gurav was attached to the Alibaug Police Station as Police Naik during the relevant time. He has deposed that on 31st August, 2012, early in the morning, the doctor of the Civil Hospital had informed the police station that a patient viz., Bharati Pawar had died on 31st August, 2012, at about 2:10 a.m. due to burn injuries. Accordingly, he had visited the Civil Hospital, Alibaug and prepared inquest panchanama. PW-8 had exhibited the inquest panchanama (Exh.11). Thereafter, the dead body was forwarded for the postmortem. After the postmortem was conducted, he had handed over the body to the father of the victim for cremation. PW-8 has also deposed that he had recorded the statement of the father of the deceased. Thereafter, he had forwarded the report to PSO of Pali Police Station and Lonavala Police Station.

23. Abdul Rouf Ansari (PW-9) was a Gardner in the bungalow of one Ashraf Saudagar at old Khandala. Police had obtained his signature on the panchanama. However, it appears that PW-9 did not support the prosecution case during the trial. Therefore, his evidence is not of much relevance in this case.

24. PW-10 Sandeep Ashok Bhosale was the Investigating Officer in CR No. 89 of 2012. He was examined as PW-10. The

Investigating Officer has deposed that during the period from November, 2010 to 2013, he was attached to the Lonavala City Police Station, as PSI. The complaint was registered with the Pali Police Station. However, since the offence was committed within the jurisdiction of Lonavala, Pali police had transferred the crime to Lonavala City Police Station on 30th August, 2012. Thereafter, he had registered an offence vide C.R. No. 89 of 2012, under Section 307 of the IPC and thereafter, took up the matter for investigation. On 31st August, 2012, he had visited the spot of the incident wherein, he had found one plastic bottle in which there was liquid having smell of kerosene. He had also found the red-coloured burnt saree and black coloured burnt petticoat and a quilt and it was pasted with the pieces of burnt saree and petticoat. He had seized the articles and packed separately and had also prepared a panchanama (Exh. 43). The Investigating Officer has further deposed that on 31st August, 2012, he had recorded the statements of the witnesses, viz., Shakuntala, Bhiva, Baby, Balu Valhekar. The accused was absconding. Therefore, he had issued a letter to the Project Officer, Antar Bharati Balgram, Lonavala, for custody of the two minor sons of the victim, viz., Sunil and Anil, aged about 7 and 6 years, respectively. On 2nd November, 2012, he had arrested the accused at about 18:30 hours. While in his custody, the accused had expressed his desire on 5th September, 2012, to make a disclosure statement. Accordingly, he had called two panchas and in presence of the panchas, the accused had made voluntary disclosure statement regarding concealment of his wearing clothes i.e. a shirt and a pant, in his house.

25. PW 10 has further deposed that the accused had shown his willingness to produce the clothes in which he has kept the *mangalsutra* of his wife. Thereafter, the accused took him to his house near Rustic Highland Society, Khandala, by his official jeep and after entering his room, had shown the clothes of the accused which were kept under the bundle of fuel wood. The *mangalsutra* of the deceased was in the pant pocket which he had recovered from the spot. The Investigating Officer has deposed that he has sized the articles, packed it separately and affixed labels bearing his signature and the signatures of the panchas. He has also proved his signature in panchanama Exh. 49.

26. PW-10 has also deposed that he had recorded the statements of the witnesses. There were injuries on the face of the accused. Therefore, he had issued letter to the Medical Officer, PHC, Khandala. On 17th September, 2012, he had again recorded the statement of the relevant witnesses and on 21st September, 2012, he had forwarded the seized *muddemal* to Chemical Analyzer alongwith the report (Exh.52).

27. PW-10 has further deposed that he got the statement of Shakuntala recorded under Section 164 of the Cr.P.C. before the Judicial Magistrate First Class, Vadgaon, Maval. On completion of investigation, he had laid the charge-sheet against the accused.

28. During his cross-examination, PW-10 has stated that although he had made an attempt to record the statements of the

two boys of the victim but he could not do so since they were not replying to any of the questions.

29. It is in the backdrop of the aforesaid evidence brought on record, that this Court is being called upon to examine as to whether, the conviction of the appellant under Section 302 of the Indian Penal Code (IPC) by placing reliance on the dying declarations of the victim is sustainable in the eyes of law.

30. In the case of **Paniben (Smt) vs. State of Gujarat**³, the Hon'ble Supreme Court has observed that though a dying declaration is entitled to great weight, it has to be borne in mind that the accused has no power of cross-examination in case of a dying declaration. That is the reason, the Court should insist that the dying declaration should be of such a nature so as to inspire full confidence of the Court. The Court has to also guard that the statement of the deceased was not as a result of either tutoring, prompting or a productive imagination. It has, however, been held that it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated.

31. In the case of **Atbir vs. Government of NCT of Delhi**⁴, the Hon'ble Supreme Court, while dealing with the question of evidentiary value of the dying declaration, had analyzed the

3 (1992) 2 SCC 474

4 (2010) 9 SCC 1

previous decision of the Court on the subject and thereafter, came to the conclusion that the dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court. In para 22 of the said decision, certain principles for acceptance of dying declaration, as a basis of conviction, have been laid down, which are reproduced here-under:

“ 22. The analysis of the above decisions clearly shows that :

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”

32. Following the decision in the case of **Atbir (Supra)**, in another recent decision of the Supreme Court rendered in the case of **Naeem vs. State of Uttar Pradesh**⁵, it has further been observed in para 14, as follows:-

“ 14. It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the Court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, whether the Court is satisfied about the dying declaration being true and voluntary. It can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

33. From a careful analysis of the ratio laid down in the aforementioned decisions, there can be no manner of doubt that a dying declaration can form the sole basis of conviction provided the same inspires the confidence of the Court.

34. We have examined the evidence in the testimony of PW-3 and PW-5. Both these witnesses had independently recorded the Dying Declaration of the victim in close proximity and after obtaining the opinion of the doctor as regards the state of mind of the victim to record such statement. On both the occasions, the doctor has opined that the victim was in a good state of mind to record her statement. The statement was also recorded in presence of the doctor. Upon completion of such recording statement, the doctor (PW-4) had endorsed the same by putting his signature. The dying declarations recorded by PW-3 and PW-5 are mutually consistent and the same unequivocally implicate the accused/appellant as the person, who had poured kerosene on the victim and set her ablaze. There is nothing on record to indicate that there was any material defect in recording the dying declarations or that the dying declarations Exhs. 16 and 26 were not free from blemish.

35. Moreover, the contents of the dying declarations find due corroboration from the testimonies of the other witnesses, more particularly, PW Nos. 1, 2 and 6, who had also deposed in similar lines, indicating that as per the version of the victim, it was none

other than the accused/appellant, who had set the victim ablaze by pouring kerosene on her body.

36. The postmortem report brought on record through PW-7 also supports the prosecution case that the victim had died due to burn injuries. Under such circumstances, we are left it with no manner of doubt about the fact that the death was caused to the victim on her being set ablaze by accused-appellant, by pouring kerosene on her body.

37. One of the grounds on which the appellant's Counsel has made an attempt the impeach the dying declaration, is on account of a fact that the endorsement of the doctor was obtained after recording the dying declaration and, therefore, the dying declaration ought not to be relied upon by the Court. Such argument of the appellant's Counsel cannot be accepted due to the observations made by the Hon'ble Supreme Court while dealing with a similar issue in the case of **Laxman vs. State of Maharashtra**⁶, wherein the following observations were made in para 5, which reads as under:

“ 5. The court also in the aforesaid case relied upon the decision of this court in Harjeet Kaur VS. State of Punjab 1999(6) SCC 545 case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we

6 (2002) 6 SCC 710

have no hesitation in coming to the conclusion that the observations of this court in Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 to the effect that "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji & Another vs. State of Gujarat 1999(9) SCC 562 case."

38. Having held that the appellant is responsible for the homicidal death of his wife Bharati, we, now turn to answer the very nuanced but pivotal question raised by the learned Counsel for the appellant by way of alternative submission by urging that the present is a case coming within the purview of Section 304 part II of the IPC. Such a plea was also raised before the learned Court below but the same was rejected by the learned trial Court by furnishing reasons in para 31.

39. The fact that the appellant was in the habit of drinking alcohol on regular basis is well established from the evidence adduced by the PWs 1 and 2. From their testimonies it is also established that due to his drinking habit, there used to be frequent quarrel between the appellant and his wife Bharati. It appears that on the date of the incident, the appellant was

desperate to consume alcohol but he did not have the money to procure alcohol. As such, he had asked for the *mangalsutra* of his wife. It was at that time his wife Bharati had refused to give the same, which had infuriated the Appellant. He then poured kerosene on his wife and set her ablaze. However, it has also come out from the evidence of PW-6 that when she came out of her hut and saw that the victim was burning at that time the appellant Gopal was trying to extinguish the fire with a country blanket. The appellant had also accompanied the victim and the PW-6 to the Government Hospital at Lonavala. Thereafter, he had gone out to fetch an ambulance to take Bharati to her parent's home.

40. From the proven circumstances of the case there cannot be any element of doubt that it was none other than the Appellant who had poured kerosene oil on the person of his wife with the intension to set her on fire and thereafter, he had actually set her ablaze. Therefore, the intention on the part of the Appellant to cause bodily injury to his wife, which, in ordinary course, was likely to cause death to her is well established in this case. Notwithstanding the same, what cannot also be ignored by this court that after the victim was set on fire, the appellant did try to douse the fire. He had also taken her to the hospital, thus, making an attempt to save her life. Therefore, it is possible that the Appellant might not have anticipated that the act done by him would escalate to such a level so as to cause death to his wife.

41. Evidence on record further go to show that the incident was immediately preceded by a quarrel between the Appellant and his wife. Considering the level of desperation that an alcoholic might have when he runs out of his alcohol supply, the possibility of the Appellant having poured kerosene on his wife in the heat of passion and upon a sudden quarrel, cannot also be altogether ruled out in this case. What would be noteworthy in this case is that after the incident, the Appellant did not try to flee nor did he act in a cruel or unusual manner. As a matter of fact, there is evidence to show that the Appellant, along with his relatives, had taken the victim to the hospital in an attempt to save her life and thereafter, he also tried to get an Ambulance to take the victim to her parent's house.

42. Section 300 of the IPC contains certain exception, which would make a culpable homicide not a murder. Exception 4 of Section 300, reads as follows:

“Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

43. Having regard to the peculiar facts and circumstances of the case, we are of the considered view that Exception-4 of Section 300 of the IPC would be applicable in this case. As such, we hold that the conviction of the appellant under Section 302 of the IPC for committing the murder of his wife is unsustainable in the eyes of law and accordingly, the same is set aside. Consequently, the

sentence of imprisonment for life imposed upon him by the learned trial Court for committing the offence under Section 302 of the IPC also stands interfered with.

44. On the contrary, having analyzed the evidence available on record, we are of the opinion that the present is a fit case for conviction of the Appellant under Section 304 Part- I of the IPC.

45. We, accordingly, convict the appellant for committing the offence under Section 304 Part- I of the IPC and sentence him to undergo 10 (ten) years rigorous imprisonment. The fine imposed by the learned trial Court would, however, remain unaltered.

46. The jail sentence already undergone by the appellant shall be set off against the sentence imposed upon him by this order.

47. The Appeal stands partly allowed.

48. In view of disposal of the appeal, Interim Application No. 2080 of 2025 also stands disposed of.

49. Record and Proceeding be sent back to the Trial Court.

50. Requisite Fee be paid to the learned Legal Aid Counsel.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)