



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 500 OF 2003

1.	Dhanraj s/o Narhari Yedale Age: 22 years, Occu: Education R/o Papnas Zopadpatti, Tuljapur Tq. Tuljapur Dist. Osmanabad	Appellants (Original Accused)
2.	Chhayabai w/o Narhari Yedale Age 41 years, Occu: Service R/o As above	(Appellant No.3 Died, appeal to his extent abated as per order dt. 01.10.2025)
3.	Narhari s/o Farid Yedale	

VERSUS

State of Maharashtra ... Respondent

Mr. Vikas S. Tanwade, Advocate for Appellants-Accused
Mr. S. P. Sonpawale, Addl. P.P. for the respondent/State

CORAM : SANDIPKUMAR C. MORE & Y. G. KHOBRAGADE, JJ.

RESERVED ON : 20.11.2025

PRONOUNCED ON : 19.12.2025

JUDGMENT (Per: Y. G. Khobragade, J.)

1. By the present appeal under section 374(2) of the Criminal Procedure Code, the appellants-original accused takes exception to the judgment and order dated 26.03.2023 passed by the learned 2nd Additional Sessions Judge, Osmanabad, in Sessions Case No. 55 of 2002, whereby, the appellants/accused are convicted for the offences punishable under sections 498-A, 302 read with section 34 of the Indian Penal Code

and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.500/- each for the offence punishable under Section 498A and imprisonment for life with fine of Rs.1000/- each for the offence punishable under Section 302 of Indian Penal Code and ordered the sentences to run concurrently.

2. During the course of pendency of the present appeal, Accused/Appellant No.3 Narhari died on 16.09.2009, therefore, this court passed an order on 01.10.2025 and abated the appeal as against accused/appellant No.3.

3. The facts giving rise to the prosecution's case in brief are that on 03.06.2011 marriage of deceased Sangita, daughter of Das Maroti Thombre and Vatchhalabai Das Thombre, was solemnized with accused No.1 Dhanraj. Accused No. 3 Narhari and Accused No. 2 Chhaya are father and mother of the accused No.1 Dhanraj. At the time of marriage, amount of Rs.15,000/- and other household articles were given by the deceased's parents. After marriage, deceased Sangita cohabited with accused No.1 at Tuljapur. On 06.06.2001, Sangita visited her parental house alongwith her husband and at that time, accused No.1 Dhanraj demanded Rs.20,000/- from the parents of deceased for construction of house, but Sangita's parents could not fulfill said demand because of recently incurring marriage expenses of their daughter. Thereafter, on 07.06.2001, accused No.1 Dhanraj with deceased Sangita left house of Sangita's parents on motorcycle towards Tuljapur,

however, while proceeding on motorcycle, the accused No.1 Dhanraj caused Sangita to fall from his motorcycle on the road and proceeded ahead. Thereafter, on the information passed by a truck driver, accused No.1 Dhanraj returned back and took Sangita to Tuljapur and admitted her in the Hospital. Subsequently, Sangita's parents took her at Barshi for further medical treatment. Thereafter they sent Sangita at her matrimonial house. On the eve of Panchami festival, the brother of Sangita namely Suraj visited the house of the accused to take Sangita at her parental house but accused did not permit. Thereafter, mother of deceased Sangita had brought her at the parental house and then she had disclosed about her ill-treatment at the hands of accused on account of money. Further, on 02.08.2001, Vatchala, the mother of Sangita visited the house of accused to bring Sangita for the Rakhi Pournima festival and at that time also, the accused told Sangita to bring money from her parents and threatened that she would be allowed to enter in their house only if she brings the money. Accused Nos. 2 and 3 also abused her parents, but the parents of Sangita left their daughter in the house of the accused and returned to their village.

4. On 12.08.2001, at about 7.00 to 7.30 a.m., accused set Sangita on fire by pouring kerosene on her person, due to which she made hue and cry and at that time, neighbouring persons namely Anna Madhavrao Jadhav (PW6), Moinoddin Bashir Shaik (PW8), Satyabhama Dalvi, Shivanand Dalvi and Najma Shaikh saw Sangita while burning. Thereafter, the accused No. 1

Dhanraj and other persons extinguished the fire and brought her to Rural Hospital, Tuljapur in auto rickshaw. On 12.08.2001, at about 7.30 to 8.00 a.m., parents of Sangita received message on phone about the incident and serious condition of Sangita. Therefore, parents of Sangita visited Tuljapur at about 10.00 a.m., but in the meantime, Sangita was referred to Civil Hospital, Osmanabad. After visiting at Civil Hospital, Osmanabad, parents of Sangita found that Sangita was dead.

5. It is the case of prosecution that Sangita was admitted in Rural Hospital, Tuljapur, at that time, Medical Officer of Tuljapur informed the police station, Tuljapur about admission of Sangita due to burn injuries. API Shri Pratap Kulkarni (PW2), attached with Osmanabad Police Station visited at burn ward of Civil Hospital Osmanabad and after ascertaining condition of Sangita from the Medical Officer, Dr. Sunita Garad (PW3) recorded statement of Sangita in presence of P.W. 3. Thereafter statement of injured was sent to Osmanabad Police Station. Accordingly, Head Constable Maya Damodhar (PW14) registered Crime No.130 of 2001 under section 307 IPC. API Shri Patil P.W. 17 visited the spot of incident and seized Stove, Plastic Can under spot-seizure Panchanama. However, Sangita succumbed to injuries in Civil Hospital Osmanabad on 12.08.2001 at about 10.30 a.m..

6. The P.W. 16 PI Shri Birajdar conducted investigation. The I.O. conducted inquest panchanama (Exh.38) on dead body of Sangita and seized clothes from dead body. After due permission by the learned JMFC,

Tuljapur, offences punishable u/s Sec. 302, 498-A read with section 34 of the Indian Penal Code were added in Crime No. 130 of 2001. PW16 Shri Birajdar arrested the accused persons on 12.08.2001 under arrest Panchanama. The P. W. 16 I.O. recorded statements of witnesses i.e. Anna Madhavrao Jadhav (PW6), Satyabhama Dalvi, Shivanand Dalvi (PW7), Shaikh Moinoddin Bashir (PW8), Vatchala Thombre (PW4), Kumar Thombre, Das Thombre (PW5). On 12.08.2001, disclosure statement of Accused, Memorandum Panchanama(Exh.42) was recorded and matchstick box was seized under Seizure Panchanama(Exh.43). All seized property/Muddemal were sent for chemical analysis on 13.09.2001, under request letter Exh.45. During the course of investigation, father of deceased Sangita namely Das Thombre (PW5) produced marriage invitation card of Sangita.

7. On completion of investigation, charge-sheet came to be filed against the accused on 09.10.2001 before the learned Judicial Magistrate, Tuljapur. On compliance of section 209 of Cri. P. C., learned Judicial Magistrate committed trial to the learned Sessions Court at Osmanabad.

8. On 02.08.2002, the learned trial court framed charge Ex. 11 against the accused for the offences punishable under sections 302, 498-A read with section 34 IPC. The accused pleaded not guilty and claimed for trial, hence, their plea was recorded at Exh. 13,14 & 15 respectively.

9. In order to bring home the guilt of the accused/appellants, the prosecution examined following witnesses.

P. W. Nos.	Name of Witness	Exh. No.
1	Dr. Vikram Manikrao Alangekar	22
2	Pratap Prabhakar Kulkarni	24
3	Dr. Sunita w/o Narayan Garad	28
4	Smt. Vatchala w/o Das Thombre	30
5	Shri Das Maroti Thombre	31
6.	Anna Madhavrao Jadhav	32
7.	Shivanand Jyotiba Dalvi	33
8	Shaikh Mainoddin Bashir	35
9	Dnyandeo Kisan Sonwane	36
10	Dilip Masa Jadhav	37
11	Subhash Limbaji Patil	39
12	Dattatray Sugriv Labde,	41
13	Sudhakar Keshavrao Pawar	44
14	Maya Shripati Damodhar	50
15	Vilas Tuljaram Kshirsagar	51
16	Dundappa Sankondappa Birajdar	53
17	Fakirappa Sahadeo Patil	69

10. Besides Oral evidence, the prosecution proved following documentary evidence:

Sr. No.	Documentary Evidence	Exhibit Nos.
1	The post-mortem report	Exh. 23
2	Intimation Letter by the Medical Officer PW. No. 3 to the police on duty regarding the admission of patient Sangita.	Exh. 25
3	The Dying Declaration	(Exh. 26).
4	Endorsement of physical and mental condition of deceased Sangita on	D.D. Exh. 26
5	Seizure panchanama of articles and the spot panchanama	Exh. 40
6	The inquest panchanama	Exh. 38
7	The seizure panchanama of matchbox	Exh. 42
8	Request letter for carrying the seized articles for Chemical Analyzer examination	Exh. 45.
9	The spot panchanama	Exh. 40
10	C. A. Report	Exh. 85
11	Marriage card	Exh. 55

11. After the evidence is over, the statements of accused were recorded under section 313 of the Criminal Procedure Code at Exh. 18, 19, 20 and 21.

12. PW-4 Vatchalabai W/o Das Thombre and PW-5 Das Thombre deposed that after marriage, their daughter Sangita went for cohabitation with her husband accused no.1 and after four days of her marriage, Sangita, alongwith her husband accused no.1 had been to their house. After halting

for the night, on the next day, Accused No.1 and deceased Sangita proceeded towards Tuljapur on a motorcycle, but midway, Accused No.1 Dhanraj caused Sangita to fall from the motorcycle on the road and then proceeded ahead. Thereafter on information given by the truck driver, Accused No.1 Dhanraj returned back and took Sangita to hospital at Tuljapur. The said fact was narrated them by the deceased. As per evidence of PW4 and PW5 their married daughter Sangita was subjected to cruelty at the hands of accused persons for demand of dowry of Rs.20,000/- for construction of house. So also, deceased Sangita was sent by accused persons with PW4 (father of deceased) to bring Rs.20000/- for construction of house.

13. PW4 and PW5 cross examined on behalf of the accused and tried to bring on record that the accused are having 10-11 acres land and accused no.3 is serving in municipality, so also, financial condition of the accused persons were good, therefore, no question arose of raising any demand for the alleged dowry; likewise, they never subjected the victim to cruelty. However, it has been brought on record that after two months of marriage, Sangita was burned.

14. P.W. 2 Shri Pratap Prabhakar Kulkarni, ASI, who recorded dying declaration of deceased Sangita deposed at Exh. 24 that, on 12.08.2001 he was on duty as Chouki Amaldar in Civil Hospital, Osmanabad and on that day the medical officer informed him by letter Exh. 25 about the burned condition of Sangita Dhanraj Yedale. He further deposed that, he went into

the burn ward alongwith medical officer Smt. Garad and got examined the said patient through medical officer. He further deposed that, said medical officer opined that, the patient is in conscious condition and then he recorded the statement of injured Sangita in question and answer form. PW2 deposed that when he asked the next question, the injured did not speak so also she did not answer who brought her to the Hospital and at that time PW-3 Dr. Sunita Garad examined Sangita and opined that the patient is not in condition to give the further statement. Thereafter, said Medical Officer made endorsement on the statement and signed it. PW-3 Medical Officer certified that patient was conscious at about 9.50 a.m and she became semi unconscious at about 10.00 a.m. PW-2 deposed that he recorded statement of burnt Sangita on 12.08.2001 at about 9.50 a.m to 10.00 a.m.

15. In cross examination of PW-2, it has been tried to bring on record that he did not personally ask the patient Sangita about her conscious condition and no endorsement is made by the medical officer about consciousness of patient on Exh. 26- Dying Declaration but said suggestion was denied. Though suggestion was given about presence of parents of Sangita but said suggestion was denied by PW2. PW2 admitted in his cross examination about bringing patient Sangita by her in-laws and husband/accused No.1 to the hospital. So also, there is no statement at the beginning of Exh.26 about endorsement of medical officer to show consciousness of the patient Sangita to give statement. PW-2 denied that

patient Sangita was not conscious while recording her statement. PW-2 further denied that patient Sangita had not stated him about pouring kerosene on her person by her in-laws and her husband set her on fire with the matchstick. However, PW-2 admitted that Sangita became unconscious after completion of 14th question put to her but he denied about obtaining her thumb impression after she became unconscious. PW2 further stated in his cross examination about obtaining thumb impression of patient Sangita in presence of Medical Officer PW3, when Sangita was not able to answer further questions and obtained thumb impression of the patient immediately after completion of 14th question.

16. As per evidence of PW-3 Dr. Sunita Garad, Medical Officer patient Sangita Dhanraj Yedale was admitted in the Hospital on 12.08.2001 at about 09.15 a.m., due to burn injuries. The said patient was referred by the Medical Officer, Rural Hospital, Tuljapur. PW3 deposed that she examined the patient and issued request letter Exh. 25 to the police about admission of Sangita in the Hospital with burn injuries. Thereafter, Police personnel PW2 Pratap Kulkarni visited the burn ward. Thereafter she re-examined the patient Sangita on request of PW. 2 and found that the patient was conscious and under the state of mind to give her statement. Therefore, PW-2 ASI Pratap Kulkarni directed relatives of the injured to go out of burn ward and recorded statement of injured Sangita in question and answer form. After making preliminary enquiry about solemnization of her marriage, full name,

address, place of marriage, PW-2 recorded statement of the deceased, wherein, it was stated that, her in-laws accused Nos. 2 and 3 poured kerosene on her person and her husband accused No.1 set her on fire with matchstick.

17. Prosecution examined PW-1 Dr. Vikram Alangekar, who conducted postmortem of dead body of Sangita on 12.08.2001 at about 3.55 p.m. to 4.50 p.m. As per evidence of PW-1, he found injuries superficial to deep, head, neck face 9%, right upper limb 9%, left upper limb 9%, chest and abdomen 18%, back 18%, perineal 1%, right lower limb 17% and left lower limb 17, total 98% and mentioned the injuries in column No. 17 and issued Postmortem report Exh. 23. In cross examination, PW1 admitted that injuries mentioned in Column No.17 of Postmortem report may be possible if a person under the angry state of mood may pour kerosene on his/her person and set herself on fire.

18. Learned counsel appearing for the appellants has filed written notes of argument and orally argued the matter for a considerable time. Learned counsel appearing for the accused canvassed in vehemence that PW-2 has scribed the Dying declaration Exh 26 and Medical Officer PW-3 admitted in her evidence that the condition of Patient Sangita was very critical. PW-1 Medical Officer Dr. Vikram Manikrao Alangekar who conducted autopsy on dead body of Sangita deposed that the entire body of deceased was burned and described burn injuries in column No.17 of the

postmortem report Exh.23. Therefore, it proves that the entire body of deceased Sangita was burned including head, neck, face, right upper limb, right lower limb, left upper limb, left lower limb, total 98%. Therefore, as per Rule 9 of the Medical Jurisprudence, these are considered as 100% injuries, which are corroborated by postmortem report Exh. 23 as well as evidence of PW-10 Dilip Masa Jadhav, witness to the inquest Panchanama Exh. 38. Therefore, the patient Sangita was not conscious and she was not capable to give her statement, hence, said statement is not reliable and not sufficient to award conviction.

19. Learned counsel appearing for the appellants accused further canvassed that PW-1, Medical Officer conducted Postmortem on dead body of Sangita and opined about cause of death of deceased due to shock and 98% superficial to deep burn. Therefore, condition of deceased was very critical and she was not physically fit and not in state of mind to give her dying declaration Exh. 26. Therefore, the said dying declaration is not reliable. However, the learned trial court heavily placed reliance on said dying declaration Exh. 26 and wrongly convicted the appellants/ accused.

20. Learned counsel appearing for the appellants accused further canvassed that thumb impression of deceased Sangita on dying declaration Exh 26 is not attested by PW-2 and PW-3 because both these witnesses admitted in their cross examination that thumb impression was not attested. PW3 Medical Officer Dr. Sunita Garad admitted in her cross examination

about obtaining thumb impression of patient after 14th question at about 10.00 a.m. But the endorsement made by PW-3 Medical Officer shows that at about 10.00 a.m. deceased Sangita became unconscious. PW-2 API Pratap Kulkarni admitted in his cross examination about obtaining thumb impression of Sangita at about 10.00 a.m. Therefore, this fact itself proves that thumb impression of patient Sangita was obtained when she had become unconscious. So also, after 14th question, the contents of Exh. 26 were not read over and explained to deceased Sangita about recording the same as per her say and answers to Question Nos. 8 and 9 not been answered by patient Sangita. It is further canvassed that question Nos. 8 and 9 were kept blank because the deceased did not answer. Similarly, after 14th question, the deceased became unconscious and therefore, remaining questions were left blank. Therefore, there is no declaration about the truthfulness of dying declaration from deceased Sangita as she became unconscious from 10.00 a.m.

21. In support of this submissions, the learned counsel appearing for the appellants/accused placed reliance on the following case laws:

(1) *Shivaji s/o Tukaram Patdukhe v. State of Maharashtra, 2004 1 MR (Cri) 3220*, wherein, the coordinate Bench of this Court at the Principal Seat observed that "the dying declaration at Exh. 24, according to us, can not be relied upon as the statement was never read over to deceased Durgabai and there is no endorsement to that effect. When the declaration was not read over to

Durgabai and she had not admitted the contents thereof to be correct, according to us, the dying declaration can not be made foundation for sustaining the conviction."

(2) *Shaikh Bakshu and others v. State of Maharashtra, reported in (2007) 11 SCC 269*, wherein the Hon'ble Apex Court observed that Nayab Tahsildar has not produced letter because it may be misplaced but nothing was prevented the prosecution to produce copy of letter which was purportedly returned to the Nayab Tahsildar and condition of deceased was very poor as stated by the medical officer and the condition was deteriorated since 6.10 p.m. The learned trial court, however held the dying declaration to be credible because medical was present when the dying declaration was recorded. There was no mention about the dying was read over and explained to the deceased. Therefore, the dying declaration was unacceptable.

(3) *Milind Ramchandra Gharat Vs. State of Maharashtra Laws (Bom) 2014-12-18* decided on 01.12.2014 by coordinate Bench of this Court at the Principal Seat, wherein PW-4 father of deceased had deposed about making oral dying declaration to him that she had been set ablaze by the appellant. According to him, Pratibha had informed him that the appellant had come to her house and had dragged her to the bedroom and thereafter had poured kerosene on her and had set her ablaze. However, during cross examination, contradictions are brought. Therefore, by virtue of said contradictions, it has been held that oral dying declaration cannot be made basis for conviction as the omissions are touching the incident in question.

(4) *Abdul Riyaz Abdul Bashir vs. State of Maharashtra 2012 ALL MR (Cri) 2188*

wherein, it has been observed that statement as recorded was not read over to the deceased and there is no endorsement to that effect. Under such circumstances, the said dying declaration cannot be foundation for sustaining conviction merely because it is mentioned in printed proforma that statement is read over to declarant and that the declarant had admitted the contents to have been correctly recorded, no reliance could be placed on the dying declaration.

(5) *Gajanan Hanumant Jiddewar, 2016 All MR (Criminal) 4919*, wherein,

three dying declarations were recorded but there were no endorsement about the fitness of the deceased prior to and after recording of the declaration. So also, no explanation was offered as to the thumb impression of the deceased was obtained over when both palms of the deceased were burn and her body was also bandaged. In the said case, the first dying declaration was recorded without any endorsement about her fitness prior and after recording of dying declaration. Second dying declaration though endorsed with fitness of deceased to make such statement, it is silent about who recorded the said declaration. The third dying declaration was recorded by complying all requirements under section 32 and thereafter thumb impression of the deceased was taken on declaration, however, no explanation was offered as to presence of clear ridges and curves over the thumb impression when both palms of deceased were burnt and her body was bandaged. Under the circumstances all these three dying declarations are not in accordance with law and hence, not reliable.

22. Per contra, learned APP supported the findings recorded by the learned trial Court and canvassed that marriage of deceased Sangita was solemnized with accused No. 1 on 03.06.2001 and after marriage Sangita cohabited with Accused No.1 at Tuljapur, however, soon after marriage she was subjected to cruelty by the accused on account of their demand of dowry of Rs.20,000/- for construction of house. The said demand could not be fulfilled by the parents of deceased Sangita because they had incurred huge expenses in marriage of their daughter. However, on 12.08.2001, within a period of 2 months and 9 days from the marriage, Accused Nos. 2 and 3 poured kerosene on the person of deceased Sangita, and Accused No.1 – her husband set her on fire by lighting a matchstick. Evidence of PW-3 shows that the patient was conscious at about 9.50 a.m. and she became semi conscious at about 10.00 a.m., therefore, she put endorsement at Exh. 26. PW-2 recorded dying declaration Exh. 26 after obtaining necessary endorsement from Medical Officer PW-3 Dr. Sunita Garad who certified that patient Sangita was conscious and under fit state of mind to give her statement. Accordingly, PW-2 API Shri Pratap Kulkarni recorded statement of deceased Sangita and while recording such statement, PW-3 Medical Officer was present. The said statement was read over to the deceased patient and verified about the correctness of the statement. The prosecution proved the dying declaration Exh.26. Therefore, the learned trial court recorded findings that the dying declaration Exh. 26 is trustworthy.

23. In support the said submissions, the learned APP placed reliance on the decision of Hon'ble Supreme Court in the case of *Jayshree Anant Khandekar Vs. State of Maharashtra, (2009) 11 SCC 647*, wherein, multiple dying declarations were placed on record and the appellant in the said case alleged to have poured kerosene on the person of deceased and set her on fire, due to which the deceased had sustained 100% burn injury and succumbed to the said injuries after 15 days and the said dying declarations were found in consistence and the declarant was conscious to make statements. Under the circumstance, the Hon'ble Supreme Court held that the dying declaration has been corroborated with multiple dying declarations given by the victim.

24. Learned APP further relied on the case of *Bhajju @ Karan Singh Vs. State of Madhya Pradesh, (2012) 4 SCC 327*, wherein the Hon'ble Apex Court laid down guidelines governing admissibility of dying declaration and held that dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular

dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the court, the same may be refused to be accepted as forming basis of the conviction. It is further held that another consideration that may weigh with the court, of course with reference to the facts of a given case, is whether the dying declaration has been able to bring a confidence thereupon or not, is it trustworthy or is merely an attempt to cover up the laches of investigation. It must allure the satisfaction of the court that reliance ought to be placed thereon rather than distrust.

25. The learned APP further relied on the case of *Muthu Kutty v. State, (2005) 9 SCC 113* where the Hon'ble Supreme Court, in para 15, held as under:

"15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben v. State of Gujarat* (1992) 2 SCC 474.

- '(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.*)
- (ii) If the court is satisfied that the dying declaration is true and voluntary it can basic conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav*10 and *Ramawati Devi v. State of Bihar*.)
- (iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor*)
- (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.*)
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.*)
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.*)
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu*.)
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha v. State of Bihar*.)
- (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased

was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P v. Madan Mohan19.)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra)"

26. Having regard to submissions canvassed on behalf of both the sides, we have gone through the entire record. As per evidence of PW4 Vatchala and PW-5 Das, parents of deceased, as well as marriage invitation card Exh. 55, it proves that marriage of Sangita and accused No.1 Dhanraj was solemnized on 03.06.2001, prior to 2 months and 9 days of incident of Sangita's death i.e. 12.08.2001. Accused Nos. 2 and 3, are parents of accused no. 1 Dhanraj and said fact is admitted by them while recording their statements under Section 313 of the Cr.PC. Insofar as the allegations against the accused in respect of cruelty and ill-treatment to Sangita, the prosecution relied on the evidence of star witnesses i.e. PW-4, PW-5 as well as PW1, PW2, PW3, PW10, PW11 and PW-12.

27. PW4- Vatchala, mother of deceased, deposed at Exh.30 that after marriage, her daughter Sangita cohabited with Accused No.1 at Tuljapur and after four days of marriage, Sangita visited her house at Vairag and halted for a night and on the next day, Sangita and accused No.1 left for Tuljapur

on motorcycle. But, while proceeding towards Tuljapur on motorcycle, accused No.1 caused to fall Sangita from motorcycle and went ahead. Thereafter, one truck came from back side and the truck driver told accused Dhanraj that a lady fell down on road from motorcycle and thereafter the accused returned back and took Sangita on his motorcycle to the Hospital at Tuljapur and then to Hospital at Osmanabad. Thereafter PW-4 took Sangita to the Hospital of Dr. Gurgute at Barshi, wherein Sangita was admitted for 15 days. Thereafter, a phone call was received from accused No.1 Dhanraj and upon which Sangita was brought at her matrimonial house. She further deposed that she had sent her son Suraj to bring Sangita at her house for Panchami Festival but accused did not send Sangita with Suraj, hence, she went to the house of accused and on next day she brought Sangita to her house at village Vairag i.e. parental house. After Panchmi festival was over, P.W. 4 took Sangita at the house of accused. Thereafter, when her husband (PW5 Das Thombre) visited the house of accused to bring Sangita at their house for Rakshabandan Festival and at that time, the accused had sent Sangita by saying her to bring Rs.20,000/- for house construction. She further deposed that Sangita's in-laws asked her whether she had brought ₹20,000 for the construction of their house, and told Sangita to enter the house only if she had brought the money; otherwise, she should go back with her parent. Thereafter, PW4 and her husband PW-5 told Sangita's in-laws that they have given Sangita to them in marriage and from that day she is not their daughter and accused will have to take care of their daughter. They

will not take back their daughter and thereafter they returned to their village by leaving Sangita at her matrimonial house. Then, after four days, a phone message was received about burning of Sangita.

28. The defence tried to bring on record that, the P. W. 5 Das Maruti Thombare is having two wives and on said account there were always quarrels between the P. W. 4 and P. W. 5, due to which Sangita was not ready and willing to go to her parental house. So also, accused Dhanraj No. 1 is only son of his parents and accused no.1 having 10-11 acres of land. The father of accused Dhanraj was serving in Municipality and accordingly marriage of Sangita was solemnized with accused No.1 as he was the only child of his parents and having house consisting 2/3 rooms. But all these suggestions were denied by the P. W. 4

29. Evidence of P. W. 4 Smt. Vatchala Das Thombare and PW5-Das Thombre, parents of deceased appears to be in corroboration about solemnization of marriage between accused No.1 Dhanraj and deceased Sangita on 03.06.2001 as well as incident of falling of Sangita on Road from motorcycle while returning to Tuljapur from village Vairag. Evidence of both these witnesses also corroborates about admission of Sangita in the Hospital at Tuljapur and subsequent medical treatment of Dr. Gurgute at Barshi. As per evidence of PW-5 ,when his daughter Sangita visited his house, she had told him and his wife (PW-4) about raising of demand of ₹20,000/- by the Accused No. 1 for the construction of the house and on

that count she was being subjected to ill-treatment. So also, after the P. W. 5 shown disinclination to pay said amount due to incurring marriage expenses recently, soon thereafter within 3/4 days, he received phone message that Sangita was killed by setting on fire. Though the defence conducted lengthy cross examination of P. W. 4 & 5 but nothing has been solicited in cross examination that accused persons never raised demand of Rs.20,000/-.

30. After going through the evidence of PW3 Dr. Sunita Garad, Medical Officer, Civil Hospital, Osmanabad it appears that, on 12.08.2001, she was discharging duty as casualty Medical Officer from 08.00 a.m. to 2.00 p.m. and during her duty period, patient Sangita was admitted in the Civil Hospital on 12.08.2011 at about 9.15 a.m., and she medically examined the patient and taken history. Thereafter, she issued letter Exh. 25 to the Police and informed about admission of patient with burn injuries. Thereafter, PW2 visited the burn. Thereafter she re-examined patient Sangita on his request and at that time the patient was conscious and under fit state of mind to give her statement at about 9.50 a.m. Thereafter P. W. 2 ASI Shri Pratap Kulkarni recorded statement of Sangita. While recording statement of Sangita the P. W. 3 Medical Officer was present. As per evidence of PW-3 the patient Sangita became semi conscious at about 10.00 a.m., hence, she made endorsement. However, at about 10.15 a.m., patient Sangita became unconscious and when she re-examined the patient at 10.30 a.m., the patient was dead.

Therefore, she informed the police about the death by issuing letter Exh. 29. No doubt, in cross examination, it is brought on record that, PW3 has not made endorsement on the top of statement Exh. 26 about consciousness of patient Sangita but the PW-3 specifically stated that when she medically examined the patient Sangita, she found that the patient was conscious and under fit state of mind to give her statement. In cross examination, the defence put the following question and the P. W. 3 Medical Officer answered as under:

Q. Generally, in burn cases, the patient is always in conscious condition till last moment ?

Ans: It depends upon each and every patient, patient may die suddenly or she may go in semi-conscious stage.

31. It is matter of record that, PW-3 has not denied about non issuance of separate certificate about mentally fit to give statement by the patient and there is no attestation made by the P. W. 2 ASI or the P. W. 3 in respect of thumb impression of patient on statement Exh. 26 but P. W. 3 Medical officer denied that thumb impression of patient on Exh. 26 was obtained when the patient was in unconscious condition. Therefore, it prima facie proves that, while recording Statement Exh. 26 at about 9.50 a.m. the patient Sangita was conscious till 10.am., but at about 10.15 am, she became semi conscious. Later on at about 10.30 a.m., the patient Sangita died. Therefore, it proves that, when the P. W. 2 started recording Statement Exh. 26, the patient Sangita was conscious and her dying declaration was

recorded as per her say. Therefore, there are no infirmities and said statement appears to be truthful, trustworthy and reliable.

32. In case of *Purshottam Chopra & Anr. Vs. State (Govt. of NCT, Delhi), 2020 AIR (SC) 346* the Hon'ble Supreme Court laid down some principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

- (i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.
- (ii) The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.
- (iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.
- (iv) When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.
- (v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.
- (vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.
- (vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

(viii) If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

33. The accused have not denied about seizure Panchanama of Clothes of deceased, Stove, some quantity of kerosene as well as FSL report and Spot Panchanama. It is a matter of record that, during course of investigation, the I.O. P.W. 16 P.I. Shri D. S. Birajdar recorded statements of P. W. 6 Anna Madhavrao Jadhav, P. W. 7 Shivanand Jyotiba Dalvi, P. W. 8 Shaikh Mainoddin Bashir and P. W. 9 Dnyandeo Kisan Sonwane, the Auto Rikshaw Driver, in whose Rikshaw deceased was taken to Hospital, but they did not support case of the prosecution. However, the P.W. 16 P.I. Shri D. S. Birajdar deposed that, he has recorded statements of P. W. 6 to 9 as per their say and while recording statements, they stated portion marked Exh. 56 to 65. It is needless to mention here that, the P. W. 6 to 9 are residing near the house of accused, therefore, there is every possibility that they are won over by the accused.

34. It is further submitted that, in order to prove the defence, the accused examined DW1 Shri Dilip Ganpatrao Deshmukh at Exh.1 Chief Officer of Municipality at Exh.76, who deposed that accused No. 3 Narhari was working in Municipality in sanitary section and on 11.08.2001 he was present on his duty as per muster roll. On 11.8.2001, accused No.3 was entrusted with the duty with Aradwadi School as watchman from 7.00 p.m.

to 7.00 a.m. of next day and proved original muster roll at Exh. 78. However, in cross examination DW1 admitted that, he has no direct control over each and every staff member, but head of the concerned section having control on staff members working in each section of the Municipality. DW1 admitted that accused No.3 Narhari is a sanitary labour but as per record, he is unable to say whether there was any order in writing to entrust the duty as watchman at Aradwadi school. So also, he cannot state exactly whether accused no.3 Narhari was actually present on his duty till 7.00 a.m of 12.08.2002.

35. On perusal of evidence of prosecution witnesses, it *prima facie* proves that, the marriage between deceased Sangita and Accused No.1 Dhanraj was solemnized on 03.06.2001 and soon thereafter, deceased cohabited with the accused no.1 alongwith accused Nos. 2 and 3. It further proves that, when the PW5 Das Thombre visited the house of accused to bring Sangita on eve of Rakshabandan Festival and at that time, the accused sent Sangita by saying her to bring Rs.20,000/- for construction of house and when she returned at her matrimonial house, at that time her in-laws asked her whether she brought Rs.20,000/- or not and told Sangita to enter in the house only if she brought money else she can go back with her parent. Thereafter, within 3/4 days, the incident of burning occurred. Therefore, it proves that, soon before the incident, the deceased Sangita was subjected to cruelty. So also, on 12.08.2001, soon after lapse of two months and 9 days

of marriage, Accused Nos. 2 and 3 poured kerosene on her person and accused No.1 set her on fire by lighting matchstick due to non fulfillment of illegal demand of dowry.

36. During the course of investigation, the P. W. 16 I.O. Shri D. S. Birajdar had visited the spot of incident and drawn spot Panchanama-Seizure panchanama Exh. 40 and seized Stove containing kerosene Art. 1, White colour plastic can containing two liters kerosene Article 2, pieces of burn clothes (petticoat) attached with skin Article-3, Matchbox Article 4. As per FSL report Exh. 85, results of detection of kerosene residues on partly burnt blue Coloured cloth pieces wrapped in paper found positive. Therefore, all these facts and circumstances discussed above coupled with dying declaration Exh. 26 of deceased Sangita and evidence of PW-4 and PW-5 prove that, the deceased Sangita was subjected to cruelty and ill-treated at the hand of Appellants/accused on account nonfulfillment of their demand of Rs.20,000/- and on said account the Appellants/accused, in collusion with each other, committed murder of Sangita by pouring kerosene on her person and setting her on fire.

37. On 26.03.2023, the learned 2nd Ad- Additional Sessions Judge, Osmanabad passed the impugned judgment and order after appreciating the evidence of prosecution witnesses, particularly dying declaration in the light of the surrounding circumstances and held the accused guilty and convicted them for the offences punishable under sections 498-A, 302 read

with section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.500/- each for the offence punishable under Section 498A and imprisonment for life with fine of Rs.1000/- each for the offence punishable under Section 302 of Indian Penal Code. Therefore, the findings recorded by the learned trial Court are based on oral as well as documentary evidence, which do not appear illegal, arbitrary and no grounds are set out to interfere with the said findings.

38. In view of the above, the criminal appeal stands dismissed.

39. Bail bonds of the appellants stand cancelled. The Appellants shall surrender before the trial court within period of four (4) weeks from today to undergo remaining sentence as ordered by the trial court.

40. Record and proceedings be remitted back to the trial Court as per rules.

(Y. G. KHOBRAGADE, J.)

(SANDIPKUMAR C. MORE J.)

JPChavan