

Bapu and Others Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Sep-21-2015

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Appeal No. 537 of 2012

Appellant : Bapu and Others

Respondent : The State of Maharashtra

Judgement :

S.S. Shinde, J.

1. This Criminal Appeal is filed by the Appellants “ original accused Nos. 1 to 4, challenging the Judgment and Order dated 21st July, 2012 passed by the Additional Sessions Judge-2, Beed in Sessions Case No. 146/2011, thereby convicting the appellant nos. 1 to 3 [original accused nos. 1 to 3] for the offence punishable under Section 302 r/w.34 of IP Code and they are sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/- [Rs.One Thousand only] each, in default to suffer R.I. for 3 months. Appellant Nos. 1 to 4 [original accused nos. 1 to 4] are further convicted for the offence punishable under Section 498-A r/w. 34 of IP Code and they are sentenced to suffer rigorous imprisonment for 2 Years and to pay fine of Rs.500/- each, in default to suffer R.I. for one month. The appellant nos. 1 to 3 [original accused nos. 1 to 3] are further convicted for the offence punishable under Section 341 r/w. 34 of IP Code and they are sentenced

to suffer rigorous imprisonment for one month and to pay fine of Rs.500/- each, in default to suffer R.I. for one month, and the appellant nos. 1 to 3 [original accused nos. 1 to 3] are further convicted for the offence punishable under Section 452 r/w. 34 of IP Code and they are sentenced to suffer rigorous imprisonment for 2 Years and to pay fine of Rs.500/- each, in default to suffer R.I. for one month. All the substantive sentences are ordered to be run concurrently.

Facts of prosecution case, in brief, are as under:

2. On 20.06.2011, one ill-fated young woman namely Manisha d/o. Santosh Waman, resident of Gahukhed, Taluka Ashti, District Beed [in short ~deceased™] was admitted in burn Ward in the Civil Hospital, Ahmednagar at about 12.40 p.m. Accordingly, the Medical Officer informed to the Police Chowki, Civil Hospital, Ahmednagar about the admission of the deceased. As the deceased had sustained 68% burn injuries, a letter was issued to the Special Judicial Magistrate, Ahmednagar [in short ~SJM™] for recording her dying declaration. After receipt of the letter, one Mr. Gorakshnath Dashrath Ghugarkar, SJM, proceeded to the Civil Hospital, met the Medical Officer on duty and asked her to examine the deceased / patient about her fitness to give statement. After examination, the Doctor put an endorsement on the paper on which Dying Declaration was to be recorded that, the patient was in a fit condition to give her statement. It was the time of 2.30 p.m. Thereafter, the SJM started to note down the statement of the deceased. The deceased, in her statement, divulged the incident, as under:

3. The deceased stated that, she is residing along with her mother-in-law, father-in-law, brother-in-law, and sister-in-law is residing separately. She has further stated that, today i.e. on Monday at 10.00 a.m., she is burnt in the house. Her husband is a Driver by Profession. He used to come in the village once or twice in a week. Her marriage was solemnized before 1 and years. Her parental home is at village Ghatpimpri. Her sister-in-law Rani, brother-in-law Bapu Waman, and mother-in-law used to raise quarrel with her, since her marriage without any reason. Her sister-in-law Rani is the daughter of maternal uncle of accused and she was desiring that, her sister should be the wife of husband of the deceased. On that count, they frequently used to raise quarrel with her. The deceased has

further stated that, her mother-in-law always used to tell her, she is not doing any work why she is cohabiting? leave the house. Her sister in law always used to say her that, ~she wanted to bring her sister in this house and the deceased unnecessarily entered in the house™. Her sister in law used to tell false and also misinform her husband, and after believing same. Her husband used to harass and ill-treat her. Her husband used to tell her, ~she should not live with him, he wants to marry with the sister of Rani, he likes her and she should leave the house?. The deceased has further stated that, since her marriage, there was intimacy and closeness between her husband and her sister in law Rani and they also used to take meals together. They used to insult and humiliate her. In her presence and also behind her back, her husband and sister in law used to come close with different intention. In that way, her sister in law herself has created a vacuum between her and her husband.

4. Manisha had further stated that, in the night her husband had quarreled with her, stating that, ~she should go to the parental home and live there™. He is inclined to marry with the sister of Rani as he likes her and deceased should go and should not return™. As such, her husband quarreled with her for a whole night and ill-treated and harassed her.

5. The deceased has further stated that, today at about 10.00 a.m., sister-in-law, mother-in-law and brother-in-law, the trio had bolted the door of the house from inside and also shut the windows. Thereafter, her sister-in-law and brother-in-law poured entire four liters of kerosene on her person and her mother-in-law ignited match stick and set on fire one end of her sari, which was soaked with kerosene. The fire engulf the sari and she started shrieking. At that time, her brother-in-law pressed her mouth. Thereafter, she forcibly rescued herself unlatched the door and rushed outside. One Shankar Waman, his wife and children doused the fire, after pouring water. Brother-in-law and Shankar Waman had brought her in the Hospital.

6. The deceased has further stated that, her husband always used to tell her ~not to cohabit, leave the house as he is intending to perform second marriage™. Since her marriage, her husband is harassing her. Her sister in law Rani, brother

in law Bapu Waman and mother in law Asrabai Haribhau Waman, the trio with intent to kill her, after shutting the doors and windows poured kerosene on her person and set her ablaze.

7. The SJM, after recording the statement of the deceased as above, obtained the endorsement of the Medical Officer to the effect that, the patient was conscious and oriented to give the statement throughout the recording of statement. Thereafter, SJM read over the contents of the statement to the deceased and obtained her thumb mark on the said statement.

8. The Police Chowki, Civil Hospital, Ahmednagar forwarded the above mentioned statement of the deceased to the Police Station Ambhora, Taluka Ashti, District Beed. On the basis of the said statement, the Police Station Officer registered the Crime No.61/2011 for the offence under Section 498-A, 307 r/w. 34 of IP Code on the same day i.e. on 20.06.2011 against the accused persons. As the offences are cognizable one, the Police Machinery set law into motion. The investigation of the said crime was handed over to API Mr. Mahindra Ahere.

9. On 21.06.2011, the Investigating Officer had deputed PSI Noor Mohd. for recording the statement of the deceased in the Civil Hospital, Ahmednagar. On 21.06.2011, the Investigating Officer visited the spot of incident and prepared spot panchanama vide Exh.18 in presence of two panchas. Thereafter, he recorded the statements of the witnesses as per their say. He seized the muddemal property. Thereafter, he collected inquest panchanama and post mortem notes from Ahmednagar Police. He got prepared a map of spot panchanama through Revenue Circle Inspector. Thereafter, he arrested the accused nos. 1 to 3 on 21.06.2011 and accused no. 4 was arrested on 04.07.2011. The deceased breathed her last on 27.06.2011 when she was under treatment at Civil Hospital, Ahmednagar. The Investigating Officer on 29.06.2011 sought permission from the Judicial Magistrate First Class, Ashti, for addition of Section 302 of IP Code against the accused. After completion of investigation, he presented the charge sheet against the accused persons before the Judicial Magistrate First Class, Ashti.

10. Since the offence punishable under Section 302 of IP Code is exclusively triable by the Court of Sessions, the Magistrate committed the case to the Court of Sessions for the trial on 19.09.2011. After appearance of the accused persons, the charge was framed against them vide Exh.8 on 18.11.2011 for the offences punishable under Section 498-A, 302, 341 and 452 r/w. 34 of IP Code. Contents of the charge were read over and explained to the accused persons in the vernacular. The accused pleaded not guilty. Precisely, accused put the prosecution being to the task for establishing levelled charges with the requisite standard of proof.

11. In order to bring home the guilt of the accused persons prosecution endeavoured to examine as many as eight [8] witnesses as under:

PW-1	Vishnu Nagnath Shekade at Exhibit-17. He is the Panch witness on the spot panchanama and search panchanama of house of the accused.
PW-2	Shankar Dinkar Waman at Exhibit-20. He is the witness before whom deceased revealed about the incident.
PW-3	Gorakshnath Dashrath Ghugarkar at Exhibit-22. He is the Special Judicial Magistrate, who recorded the dying declaration of the deceased in Civil Hospital, Ahmednagar.
PW-4	PSI Noor Mohd. of Ashti Police Station at Exhibit-27. He has recorded dying declaration of the deceased after visiting Civil Hospital, Ahmednagar.
PW-5	Dr. Priti Kamble at Exhibit-32. She is the Medical Officer at Civil Hospital, Ahmednagar, who had examined the deceased before and after recording her dying declaration and put such endorsement on dying declaration recorded by SJM.

PW-6	Dr. Shrikant Pathak at Exhibit-34. He is the Medical Officer, Civil Hospital, Ahmednagar, who had conducted autopsy on the dead body of the deceased.
PW-7	Namdeo Ramchandra Ghumbre at Exhibit-36. He is the father of the deceased before whom the deceased has revealed the incident.
PW-8	API Mahindra Ahere at Exhibit-37. He is the Investigating Officer.

12. Accused are called upon to explain incriminating circumstances appearing against them during the course of evidence by recording their statement under Section 313 of Criminal Procedure Code. The defence of accused is of total denial. The accused persons have also submitted their written statement in their defence vide Exhibit-48. The accused persons in order to substantiate their defence examined one Usha w/o. Shankar Waman [DW-1] at Exhibit 49.

13. The learned counsel appearing for the Appellants submitted that, the story put-forth by the prosecution regarding inclination of the Appellant No.4 to marry with the sister of the Appellant No.2 is an afterthought and false. The deceased Manisha was moved to the Hospital by the Appellant No.1 himself, which is mitigating circumstance in favour of the Appellants. The spot panchanama at Exhibit-18 does not support the prosecution case, as it has not been duly proved. The ocular evidence of PW-1 Vishnu Nagnath Shekade at Exhibit-17 also does not support the prosecution case, and the same is full of omissions and contradictions. The evidence of PW-2 Shankar Dinkar Waman at Exhibit-20 is full of omissions and contradictions, and cannot be relied upon. The evidence of PW-3 Gorakshnath Dashrath Ghugarkar at Exhibit-22, the Special Judicial Magistrate, who recorded the dying declaration of deceased Manisha, is not trustworthy, and is full of omissions and contradictions. The prosecution did not examine any independent witness to prove the fact of ill-treatment, and the alleged incident. The evidence of PW-5 Dr.Priti Kamble at Exhibit-32, and PW-6 Dr. Shrikant Pathak at Exhibit-34 are also no assistance to the prosecution and moreover, the endorsement on the dying declaration falsely put, thereby diminishing the sanctity of dying declaration.

14. It is submitted that, the written statements of the Appellants in their defence vide Exhibit-48 have not been considered by the trial Court in its proper perspective. The testimony of defence witness namely Usha w/o. Shankar Waman at Exhibit-49 has also not been considered by the trial Court, which points out the innocence of the Appellants. Two dying declarations of deceased Manisha recorded on 20th June, 2011 and 21st June, 2011 have not been duly proved and there is inconsistency between them. It is submitted that, the deceased Manisha was not in conscious and fit state of mind, while giving her dying declaration, and therefore, the same could not be relied upon and recorded by the trial Court to base the conviction. The dying declaration, recorded by Special Judicial Magistrate, which has been recorded is suspicious and tutored one, which is in printed form. The thumb impression of the deceased Manisha was obtained on the blank paper and then, rest of the part of dying declaration was recorded. The admission illustrated from cross examination of Dr.Priti Kamble reveals that, general condition of deceased was not normal even prior to recording of dying declaration, and subsequently, even on the case papers, the endorsement appears that, "general condition low™ and the said condition persisted all throughout. The deceased was administered the sedatives and, therefore, she was not conscious and in fit state of mind on account of drowsiness. The deceased Manisha was desired to stay at Ahmednagar and, therefore, after noticing that, her desire could not be fulfilled, she had set herself ablaze. It is admitted by the PW-7, who is father of the deceased that, while recording the dying declaration, he was nearby the deceased and, thus, there is suspicious stand taken in the dying declaration, and it was not prudent to act of such dying declaration without there being any corroboration.

15. The learned counsel submitted that, upon reading dying declaration at Exhibit-24, it is abundantly clear that, the Magistrate did ask leading questions to the declarant, which is not permissible. In support of this contention, he placed reliance in the case of **Shirinath Durgaprasad Vs. State** (1957 Cri.L.J. 1104) and in the case of **Khushal Rao Vs. State of Bombay** (1958 AIR [SC] 22).

16. On the other hand, the learned APP appearing for the Respondent " State invited our attention to the notes of evidence, and also reasons assigned by the

trial Court and submits that, the learned trial Court has properly considered the evidence on record. Therefore, this Court may not entertain the Appeal filed by the accused “ Appellants.

17. We have given consideration to the submissions of the learned counsel appearing for the Appellants and the learned APP appearing for the Respondent “ State. With their able assistance, perused the entire evidence so as to re-appreciate the same.

18. The prosecution examined Vishnu Nagnath Shekade as PW-1, who was witnessed to the spot panchanama. During his cross examination, he stated that, he had an occasion to see the house where Police prepared spot panchnama. Prior to panchanama, accused nos. 1 and 4 and their parents are residing separately since marriage of accused No.4. Accused Nos. 1 and 4 reside in one house and their parents reside beside in the house having tin shed. He further stated that, even earlier he was called by the Police. He stated that, 5 articles which were seized, were already kept by Police Patil.

19. The prosecution examined Shankar Dinkar Waman as PW-2. He stated that, accused nos. 1 and 4 are his cousin brothers. Their houses are at the distance of 30 to 35 feet away from his house. Accused No.4 is working as Truck Driver. Marriage of accused No.4 was solemnized with Manisha about one year prior to the incident. After marriage, Manisha came to reside at Gahukhel. After one month of marriage, accused No.4 and Manisha started residing separately. He further stated that, incident of Manisha took place on 20th June, 2011 at 10.00 a.m. At that time, he himself and his wife were in their house. At that time, he heard hue and cry, then, they went towards the house of accused after hearing shouts. When they reached there, they found that, Manisha was burnt. At that time, accused Nos.1 to 3 were pouring water on the body of Manisha. Accused No.1 told him to bring Tempo. He brought Tempo. Manisha, accused No.3 and others went to Ahmednagar Hospital by the said Tempo. He had been to Ghatpimpri to inform about the incident to the parents of Manisha, and thereafter, he went to Hospital at Ahmednagare where Manisha was admitted. It did not happen that, when Manisha had come to matrimonial home, there used to be quarrel between the accused

persons. He denied any oral narration by Manisha on the date of incident.

20. He was declared hostile by the prosecution and was cross examined. He stated that, portion marked ~A™ in his statement was not stated by him to the Police, and also portion marked ~B™ and ~C™ from the supplementary statement was also not stated by him. He further stated that, he had given application to the Deputy Superintendent of Police, contending that, Police has not recorded his statement and in his name false statement was recorded by the Police. In the said application, he had also mentioned about false statement of his wife, recorded by the Police. He stated that, it is true that, after Manisha was taken to Hospital, there was nobody in the house of accused. Whatever incident he had seen, it was happened in court yard. Since when he came on spot and Manisha was taken to Hospital, it took half an hour. At that time, persons from Vasti gathered there. He had not seen whether door was fixed to the house of Santosh or not. He had informed parents of Manisha that, Manisha was burnt and she was taken to Ahmednagar for treatment. Parents of Manisha also immediately came to Hospital.

21. The prosecution case mainly rests upon two officially recorded dying declarations, which are at Exhibit-24 and 29.

22. The dying declaration at Exhibi-24 was recorded by Mr. G.D.Ghugarkar, Special Executive Magistrate, Ahmednagar. Upon perusal of the said dying declaration, the said is recorded on 20th June, 2011 at 2.35 p.m. There is endorsement of the Medical Officer at 2.30 p.m. It is mentioned that, patient is conscious and oriented to give statement. It appears that, Exhibit-24 is recorded in question-answer form. The declarant stated her name, business and qualification. Thereafter, she stated that, father-in-law, mother-in-law and her husband and herself, they are residing together and brother-in-law and sister-in-law residing near their house. When she was asked how she sustained burn injuries, she replied that, at about 10.00 a.m. the said incident had taken place in her house. Her husband is a driver and comes to house once or twice in a week. The marriage was performed 1 year before the date of incident. Her mother-in-law and sister-in-law started quarreling with her since marriage without any reason. The sister-in-law wants that, her sister should marry with the husband of declarant

Manisha, and therefore, sister-in-law, mother-in-law used to quarrel with her. Mother-in-law always says that, she is not working then why she is staying in the matrimonial house, and Manisha should leave the matrimonial house. Sister-in-law says that, she wants to bring her sister in the house, she instigated her husband and tell lies and as a result husband ill-treats her. He says that, he wants to marry with the sister of sister-in-law Rani, he likes her very much and says that, she [Manisha] should go from the house. When she was married, there was close relationship between her husband and sister-in-law. They used to have meal together in one plate. They used to harass her. Her husband and sister-in-law used to come closer with different intention. Her sister in law widened the gap between her husband and herself.

During earlier night, husband quarreled with her. He told her that, she should go to her parents house and she should reside there. He wants to marry with sister of sister-in-law Rani, he does not like her, she should go to the parent house and should not come back. Accordingly, he quarreled during night and harassed her

23. Today at 10.00 a.m., sister-in-law, mother-in-law and brother-in-law latched the door of the house from inside and also closed the windows. Sister-in-law and brother-in-law poured four liters of kerosene from drum, and Mother-in-law ignited match stick and set on fire one end of her sari, which was soaked with kerosene. The fire engulf the sari and she started shrieking. At that time, her brother-in-law pressed her mouth. Thereafter, she forcibly rescued herself unlatched the door and rushed outside. One Shankar Waman, his wife and children doused the fire, after pouring water. Brother-in-law and Shankar Waman had brought her in the Hospital. The deceased further stated that, her husband always used to tell her ~not to cohabit, leave the house as he is intending to perform second marriage™. Since her marriage, her husband is harassing her. Her sister in law Rani, brother in law Bapu Waman and mother in law Asrabai Haribhau Waman, the trio with intent to kill her, after shutting the doors and windows poured kerosene on her person and set her ablaze. She further stated that, the contents of dying declaration were read over to her and they are correct as per her narration. Due to burn injury to her hands, she has given thumb impression of left hand. It appears that, there is endorsement of the Medical Officer at the end of the dying

declaration. The said endorsement is at 3.15 p.m. It is stated that, patient was conscious and oriented to give the statement [throughout the statement]. It further appears that, the said dying declaration is signed by Mr. G.D.Ghugarkar, Special Executive Magistrate. The thumb impression is also attached by the said Executive Magistrate.

24. The prosecution examined Gorakshanath Dashrath Ghugarkar as PW-3. In his deposition, he stated about his appointment and experience of work as Executive Magistrate. He stated that, on 20th June, 2011, letter was issued by P.C. Sayed of Police Chowki, Civil Hospital, Ahmednagar to him for recording dying declaration of Manisha Santosh Waman. After receipt of said letter, within half an hour, he had been to Civil Hospital, Ahmednagar. On reaching Hospital, he met duty Medical Officer Dr. Priti Kamble and shown her letter. He told Doctor that, he has to record dying declaration of patient [Manisha] and asked her to come with him. Thereafter, he himself along with Doctor went to the Burn Ward where Manisha was admitted. Thereafter, he requested Doctor to examine the patient and put endorsement on the paper whether patient is in fit condition to give statement. Thereafter, Doctor examined the patient and put endorsement on the paper on which dying declaration was to be recorded. The Doctor signed the said endorsement and put date and time as 2.30 p.m. Thereafter, he directed the relatives of the patient to go out of the said hall. As per his direction, all the relatives went out of the hall. He himself and Doctor were there in the said hall. Thereafter, he himself introduced to patient at 2.35 p.m. Accordingly, patient taken oath. He himself also verified whether patient is in a fit condition to give statement. Thereafter, he started asking the question to patient as to what is her name, education, age, residence, etc. She told her name as ~Manisha Santosh Waman, r/o. Gahukhel, Taluka Ashti, District Beed. She stated her age 19 years, qualification 10th, Occu. Household and agriculture. Thereafter, he asked her whether she understands Marathi, she replied in the affirmative. Then he asked her who stays along with her in the house. She replied that, husband, mother-in-law, father-in-law and she herself stays together and brother-in-law and sister-in-law stays adjacent to their house. Thereafter, he asked her how she burnt and asked in detail. She replied that, she today at 10.00 a.m. she burnt in the house. Her husband is a Driver and comes to the house once or twice in the week. Her marriage took place 1 years prior to the

date of incident and her parental home is at Ghatpimpri. She further stated that, after her marriage, her mother-in-law and sister-in-law quarrels with her for no reason. She told that, her sister-in-law Rani Bapu Waman is a daughter of maternal uncle of accused. Her sister-in-law went to bring her sister in the house, instead of her [Manisha], as wife of her husband. She further told that, her mother-in-law used to say her to leave the house. Her sister-in-law used to tell lie to her husband and on that count her husband used to ill treat her. Her husband used to tell her to leave the house, as he wants to marry with sister of Rani, as he likes her. After marriage, her sister-in-law has close relation with her husband, and they used to show intimacy with each other. They both used to take food together and as such used to tease and humiliate her. They both used to be together with different intention. In the night her husband quarrel with her and also assaulted her and ill-treated her. She further stated that, today at 10.00 a.m. her sister in law, brother-in-law, mother-in-law locked the door from inside and closed the windows. Thereafter, her brother-in-law and sister-in-law poured kerosene of four liters on her person. Thereafter, her mother-in-law lit the match stick and put to her sari, smeared with kerosene, due to which she got burn, she raised cry, but her brother in law pressed her mouth. She further stated that, she forcibly rescued herself and opened the latch of door and came outside the house. She further told that, one Shankar Waman and his wife poured water on her person and douse the fire. Thereafter, her brother-in-law and Shankar brought her in the Hospital. She further stated that, her brother-in-law, sister-in-law and mother-in-law, with intention to kill her poured kerosene on her person and set her on fire.

25. After completion of recording of the statement, he read over the same to Manisha and she admitted to be correct and accordingly he made such endorsement. Since both hands of Manisha had burnt, so he obtained left hands thumb impression of Manisha on the statement and he himself attested said thumb impression. Thereafter, he asked the Doctor who was present there to examine the patient and put such endorsement as to whether patient was oriented during her statement. Accordingly, Doctor examined Manisha and put endorsement. During entire statement, patient was in conscious and in fit condition to give statement and put the date and time as 3.15 p.m. Thereafter, PW-3 signed the statement, after affixing the stamp. After recording the statement, he himself and

Doctor came outside and went inside nurses room and sealed the envelope, after keeping dying declaration therein. He handed over said sealed envelope to the Police of Police Choki, Civil Hospital, Ahmednagar and to that effect he obtained the acknowledge of Police on the letter at Exh.23.

26. This witness was cross examined by the Advocate for the accused. When he asked whether he was authorized to record dying declaration, he stated that, he has not brought the copy of order. When he came in Hospital, he did not inquire as to how much percent, the patient is burnt. He had not inquire as to who was the incharge of Burn Ward where Manisha was admitted. He met Dr. Kamble in OPD hall. The said Burn Ward is at the distance of 100 meters in the same building from OPD. In the said Burn Ward, there was no separate room but there are compartments. He had not verified from the relatives about the patient. He had also not inquired with patient as to who are the persons who were near the patient and he directed them to go out. He did not feel it necessary to ask patient so as to ascertain whether the patient was under pressure or not. He stated that, it is true portion marked ~A™ on Exhibit 24 is printed matter. it is true portion marked ~A™ is already printed, before ascertaining it from patient. It is true portion marked ~B™ on Exh.24 is also printed matter and same portion is there. Prior to asking questions to patient, he had not asked Manisha as to which village said incident took place. He does not know whether administration of oath is mandatory before recording dying declaration. Before recording statement of Manisha, he did not inquire with the relatives of the patient, he also did not make inquiry, as to whether Manisha is mentally retarded or not. He denied suggestions that, in the dying declaration at Exh.24, the last paragraph is the summary of entire statement. However, he admitted that, it is true in Exh.24 at the end, the matter written below attestation of T.I. is not written in one line. He denied suggestion that, both the endorsements put by the Doctor are endorsed at one time, without examining the patient. He recorded the statement, after ascertaining that patient was not under pressure.

27. The prosecution examined PW-5 Dr. Priti Arvind Kamble. She was working as an Medical Officer, Civil Hospital, Ahmednagar at the relevant time. In her deposition, she stated that, since last three years, she is working as an Medical

Officer in Civil Hospital, Ahmednagar. On 20th June, 2011, she was on duty as Casualty Medical Officer. On the same day, patient Manisha Santosh Waman was admitted in the Civil Hospital, Ahmednagar. She admitted the said patient. The said patient was burnt 68%. She was admitted in Burn Ward. While admitting the said patient, patient was conscious and oriented. Before recording of dying declaration by the Special Judicial Magistrate, she examined the patient and found that, she was conscious and oriented and her pulse and BP was stable, therefore, she allowed Magistrate to record her statement. She put endorsement on the said dying declaration at Exhibit-24. She endorsed initially at 2.30 p.m. The recording of statement of patient was completed at 3.15 p.m. After completion of recording of dying declaration, she again examined the patient and found that, she was conscious and oriented and also she checked her pulse and BP which was normal. The patient was conscious through out her statement. She endorsed at the end of dying declaration at 3.15 p.m.

28. In her cross examination, she stated that, patient Manisha was admitted in Hospital at 11.50 a.m. On the admission paper, the person who admitted Manisha is one Asrabai Haribhau Waman i.e. accused No.3. In the history column, it is mentioned as burn, but from same, they cannot analyze whether it is a suicidal or homicidal burn. The treatment given to the patient at the time of admission is mentioned in the right hand side column of case paper. Thereafter, he had called Surgeon, on call. At the time of admission of patient, the burns on the patient was about 68%. After examining the patient and finding the condition of patient is serious, same is informed to relative of patient. Brother of Manisha has endorsed the case paper, about receipt of said information. The endorsement subsequent to 3.15 p.m. shows that, general condition of patient is low. All endorsements thereafter are of GC low [General Condition Low]. At the time of discharge of patient from Hospital, her condition was low. The patient was administered fortwin on 20th June, 2011. On 20th June, 2011, the charge of burn ward was Dr. Pathak.

29. The prosecution examined Dr. Shrikant Chandrakant Pathak as PW-6. He deposed that, the dead body of Manisha Santosh Waman was received in Navodaya Hospital on 27th June, 2011 at 3.00 p.m. The said dead body was brought by one ASI Mantode. The said dead body was identified by Namdeo

Mahadeo Ghumre i.e. father of the deceased. PW-6 started post-mortem examination at 4.30 p.m. and completed at 5.15 p.m. Age and gender of dead body was 19 years female. While post-mortem examination, he found infected burn injuries on the body i.e. 70% area was found to be burnt. The specification is mentioned in column No.17 as under:

Right upper limb : 6%

Left upper limb : 7%

Right lower limb : 7%

Left lower limb : 10%

Head. Neck. Face : 7%

Abdomen chest : 18%

Back : 15%

All the injuries are ante-mortem. As per his opinion, the probable cause death is due to septicaemic shock due to 70% burn. Accordingly, he prepared P.M. notes. It bears his signature. Its contents are correct and same is at Exhibit-35. If some one poured kerosene and lit it, these type of injuries are possible.

30. During his cross-examination, he stated that, as per his opinion, the burn injuries of the patient got infected and death is occurred due to said infection. He cannot tell whether said burn injuries are accidental, suicidal or homicidal.

31. It appears that, the dying declaration at Exh.29 is recorded by the Assistant Police Inspector, Police Station Ambhora. In the said dying declaration, Manisha [deceased] stated that, her parentTMs place is Ghatpimpri. She is doing household work and residing at Ashti. Her husband is working as a Driver. She is having father-in-law and sister-in-law, they are residing with them. Her marriage took place before 1 to 1 year prior to the date of the incident. There is no any child born out of wedlock. Her brother-in-law Bapu, her sister-in-law Rani and mother-in-law Asrabai started harassing and ill-treating her. They used to say that, she cannot do

any work, and she should leave the matrimonial house. They used to tutor her husband.

32. On 20th June, 2011 at about 10.00 a.m., her brother-in-law Bapu Haribhau Waman, sister-in-law Rani and mother-in-law Asarabai Haribhau Waman entered in the house, brother-in-law Bapu and sister-in-law Rani poured kerosene on her and mother-in-law Asarabai ignited match sticks and set her ablaze. Boarder of her saree caught fire. She shouted loudly, at that time, brother-in-law pressed her mouth. However, she managed to come out of the house. Shankar Waman and her wife extinguished the fire. She was taken to the Hospital by Shankar Waman, mother-in-law Asarabai, brother-in-law Bapu and Nandu Waman and she was admitted in the Hospital for treatment. The statement was read over to her and she stated that, contents are as per her narration.

33. On careful perusal of her thumb impression appearing on original copy of dying declaration, said thumb impression is not identified. It is true that, the Doctor has given an endorsement that, the patient is conscious, and in good condition after giving oral statement. The said endorsement is on 21st June, 2011 at 1.30 a.m. There is also endorsement in the beginning that, the patient was conscious in good condition to give oral statement at 12.00 mid night.

34. Noor Mohd. Faiz Mohd. [PW-4], who recorded the dying declaration at Exhibit-29. In his deposition before the Court stated that, on 21st June, 2011, he recorded statement of Manisha in Civil Hospital, Ahmednagar. Prior to it, copy of dying declaration recorded by Magistrate, had received by his Police Station from Civil Hospital, Nagar. His superior ordered him to record the statement of Manisha by going to Civil Hospital, Nagar. Accordingly, he issued a letter to the Medical Officer, requesting him to give opinion whether Manisha is in fit condition to give statement. Accordingly, Doctor had come and examined the patient and made an endorsement that patient is able and in good condition to give statement. Thereafter, he started recording of statement of Manisha. He recorded statement of Manisha as per her say. After completion of statement, the said was read over to Manisha and her left hand thumb mark was obtained. After completion of statement, Doctor again examined her and made an endorsement that, the patient

was conscious, oriented and in good condition to give statement. The said endorsement given by the Doctor at 1.30 a.m. Doctor signed on the said statement in the presence of PW-4.

35. Manisha stated that, the incident took place on 20th June, 2011 at 10.00 a.m. The accused Nos. 1 to 3 brought kerosene can and accused nos. 1 and 2 poured kerosene on her person, accused no.3 lighted match stick and accused no.2 caught hold her. Thereafter, she screamed and shouting came out of the house. Then, PW-4 handed over the said statement to API Ahire. Thereafter, further investigation was carried out.

36. During his cross examination, he stated that, he went to the Civil Hospital, Nagar along with ASI Konde as per the direction given by his superior Officer. They did not inquire who was the incharge Medical Officer of that burn Ward. When he went there, Manisha was in a room. At that time mother and sister of Manisha were present there. At that time medical treatment of Manisha was going on. He further stated that, when he recorded dying declaration and when Doctor endorsed on paper, he did not pay attention whether Doctor also endorsed on case papers of Manisha. He further stated that, while recording statement of Manisha, he had also asked to mother and sister of Manisha about incident. Whatever he recorded in dying declaration, on same line, mother and sister of Manisha told him. He further stated that, said dying declaration is not recorded in his handwriting. He further stated that, he did not mention in the statement, time of recording about starting and completing the statement. He took him around 20-25 minutes to complete the recording of statement. He further stated that, it is true since Manisha was burnt, she was having severe pain and agony. It is true since there were severe pains to Manisha, it was difficult for her to speak. She did not ask about mental condition of Manisha whether she was sound and unsound of mind. When the Doctor endorsed at the end of statement whether PW-4 endorsed on the case papers of Manisha, he was not seen. He further stated that, it is not mentioned in dying declaration that, accused nos. 1 to 3 brought kerosene can. Similarly it is not mentioned in dying declaration that, the accused no. 2 caught hold her hand. It is not true that, he has recorded the statement on the say of mother and sister of Manisha.

37. Upon careful perusal of evidence of PW-4, it appears that, he did not mention time either in the beginning or at the end, when he started recording of dying declaration, and when said recording of dying declaration was completed. He did not inquire who is the Doctor who treated Manisha. Upon careful perusal of dying declaration, it appears that, initial endorsement given by the Medical Officer is at 12.00 midnight and second endorsement at the end of dying declaration by the Doctor is at 1.30 a.m. Therefore, as per the endorsement given by the Medical Officer, the recording of dying declaration started at 12.00 midnight and it was completed at 1.30 a.m. However, PW-4 in his cross examination stated that, it took 20-25 minutes to complete the recording of statement. It has also come in the cross examination of PW-4 that, when he went to the recording of statement of Manisha in a room at that time mother and sister of Manisha were present there. He has also stated that, while recording the statement of Manisha, he has also asked to her mother and sister about the incident. Therefore, it is abundantly clear that, while recording the statement of Manisha, her mother and sister were present there. Apart from it, as already observed, the thumb impression, which is taken on the dying declaration is not identified. Upon careful perusal of the copy of dying declaration and in particular thumb impression, it creates suspicion in the mind, whether the same is really thumb impression of the declarant Manisha. PW-4 has also stated in his cross examination that, he was not aware that, when the Doctor has given endorsement at the time of recording of statement.

38. It has come on record in the evidence of PW-4 that, the Medical Officer gave an endorsement on dying declaration. However, the said Medical Officer is not examined by the prosecution. His examination was necessary for the reason that PW-4 in his evidence stated that, he cannot remember when endorsement was given by the Medical Officer. It appears that, the Medical Officer gave an endorsement at 12.00 midnight, and after recording the dying declaration at 1.30 a.m. However, PW-4 in his evidence stated that, he recorded the statement of Manisha within 20-25 minutes. It has also come on record in the evidence of PW-4 that, the mother and sister of the Manisha were present at the time of recording of the dying declaration. Not only that but he also interacted them about the incident. Therefore, in the light of discussion herein above, the dying declaration at Exhibit-24 cannot be believed and same deserves to be discarded.

39. The prosecution examined Namdeo Ramchandra Ghumre as PW-7. He is father of Manisha. He deposed that, marriage of deceased Manisha was solemnized with accused No.4 on 25th May, 2010. After marriage, deceased went for co-habitation at Gahukhel at her matrimonial home. Accused treated her well for 4-5 months and thereafter, they started ill-treating her. The accused persons used to tell Manisha that, she does not know how to do work and she should leave the house and give the divorce. Manisha used to tell him about ill-treatment and at that time, he tried to convince her and sent her to matrimonial home. One day before incident, accused No.4 called him on phone and told that, he should take Manisha from the matrimonial house since he does not want to cohabit with her.

The incident took place on 20th June, 2011. On that day, at 11.00 a.m. one Shankar Waman had come to PW-7 and told about incident. He told that, Manisha is burn and is taken to the Hospital. Thereafter, he himself, his wife Latabai went to the Civil Hospital, Ahmednagar and met Manisha in the Hospital and they saw that, Manisha was burnt. On meeting her, Manisha told them that, accused Nos. 1 to 3 poured kerosene on her person and set her on fire. Thereafter, Manisha was shifted to Navodaya Hospital, for further treatment. On 27th June, 2011, during her treatment at Navodaya Hospital, Manisha died. Police recorded his statement on 21st June, 2011 and supplementary statement on 29th June, 2011. He identified the accused, who were present in the Court.

40. During his cross examination, he stated that, distance between Ghatpimpri and Gahukhel is 4-5 kilometers. The villagers of both villages used to visit each other in connection with their work. Therefore, he is aware about the villagers of Gahukhel previous to marriage of Manisha. His niece is given in the family of Waman at Gahukhel. Wife of Shankar PW-2 is from their village and her marriage was solemnized prior to marriage of Manisha. The proposal for marriage of Manisha with accused No.4 had come from the side of the accused persons in the programme of showing bride. All accused persons approved bride Manisha. His daughter Manisha was good looking and was well efficient in agricultural work as well as in domestic work. Prior to engagement of marriage, he inquired about the accused persons. Accused Nos. 1 to 4 being drivers are meant good amount. The accused were having their own house constructed in RCC. There was old house

of accused persons. In old house in laws i.e. accused No.3 and her husband were residing and in RCC house, accused No.1 and 4 were residing separately. The marriage of Manisha was solemnized happily. After marriage the matrimonial life of accused and Manisha was going happily and smoothly. Whenever accused No.4 used to go for his work, he used to return after 8 days. During that period, Manisha used to stay alone in the house. He himself and his wife used to go to house of Manisha occasionally. Accused No.2 Rani is the daughter of maternal uncle of accused No.4. Accused No.2 Rani since prior to her marriage, residing with co-accused persons. The relation between accused Nos. 2 and 4 is as brother and sister.

He had been to Gahukhel, two days prior to the incident. At that time when he went to the house of Manisha, accused Nos.2, 3 and his daughter were present in the house of accused No.2. It was 2 to 3 p.m., all were watching T.V. At that time, accused No.4 had gone to Kerala in his vehicle on that day. He was there in the house of accused for about an hour. He had taken lemon juice at the house of accused No.2. Thereafter, he went in the house of his daughter Manisha. He was at Manisha™s house for about 5 to 10 minutes when he had been to house of Manisha, he asked her about her day to day life. At that time, Manisha did not tell him about harassment. Prior to 15 days of incident, his wife had been to house of Manisha with mango. At that time, his wife stayed there for one day. When his wife returned from house of Manisha, he asked his wife whether Manisha had told anything, his wife replied that, Manisha has not stated anything.

41. PW-7 came to know about the incident from one Shankar Waman that, Manisha was burnt and she was taken to Hospital. Then, he himself, son, his wife and all relatives went to the Hospital. When they went to Hospital, they saw that, except accused No.4, all accused were present there. At that time, condition of Manisha was critical. He had inquired about the condition of Manisha with Nurse and she told that, her condition is serious. He was in the Hospital till Manisha breathed last. He further stated that, Manisha will not survive looking to her health condition.

It was desired of Manisha that, she along with accused No.4 should reside at Ahmadnagar. It is true that, desire of all accused was that, deceased Manisha should stay at village. There was quarrel between Manisha and accused No.4, but he is not aware cause for such quarrel. The said quarrel was took place on account of stay at Ahmednagar. When accused No.4 and Manisha visited the house of the accused, quarrel took place between them, and it was on account of desire of Manisha to stay at Ahmednagar. At that time, he told accused No.4 that, if Manisha desires to stay at Nagar, they should stay at Nagar. At that time accused No.4 told him that, he goes on duty and remains out of station for 8 days, therefore, he was not ready to take Manisha to Ahmednagar. He told accused No.4 that, he should stay at his AuntTMs house as he was working as Driver on their vehicle itself. Accused No.4 and Manisha had come to his house lastly one month prior to incident. At that time, there was quarrel between them on account of ManishaTMs desire to stay at Nagar. He further deposed that, accused No.4 might have told him that, Manisha threatened that she should commit suicide but he cannot tell exactly. He further stated that, he thought that, whatever incident had taken place must have happened on the reason of going to Nagar. He further deposed that, if accused No.4 would have taken Manisha to Nagar, said incident could not have been happened.

At about 2.00 to 3.00 p.m, two persons inquired about the incident, he was near Manisha. Whenever statement of Manisha was being recorded, he was nearby. During recording of statement, no third person had come there. The person who had come for recording statement was in civil dress. While recording the statement, said person made him stand near door and no third person had come there. During recording of statement, Doctor had not come there in Nagar Hospital and there is half partition between two cots. He further deposed that, the said person did not write anything in his presence. Thereafter, said person left the ward. Second statement of Manisha was recorded in the evening. In the night Police had inquired with him on that day. In the evening, Police Officer and other Police staff had come for recording statement. The Police were there for 10-15 minutes when Police persons had come, he was near Manisha. At that time, Police inquired with him and while returning. The police persons have taken accused persons with them. Both the persons who had come to record statement

of Manisha had taken the thumb mark of Manisha. When police had come to record the statement, at that time except PW-7 and Police, no third person was there. At that time, he told Manisha that, she should give statement against accused persons. At that time, he told Manisha as to how statement has to be given.

42. The prosecution examined Mahindra Damodhar Ahire as PW-8. He was working as API, Police Station, Ambhora. He stated that, crime was registered on the basis of statement of deceased Manisha, which was recorded in the Civil Hospital, Ahmednagar by Special Magistrate. Initially, offence punishable under Section 498-A, 307 r.w. 34 of IP Code was registered, and subsequently, on death of Manisha offence under Section 302 of IP Code was added. He had deputed PSI Mr.Noor Mohd. who was recording the statement of Manisha. Initially, the dying declaration of Manisha was received to them from Tophkhana Police Station, Nagar. Manisha died on 27th June, 2011. Thereafter, he visited the spot of incident on 22nd June, 2011 and prepared spot panchanama in presence of two panchas. He recorded statement of PW-2 Shankar as per his say. He also recorded his supplementary statement. He stated that, portion marked ~A™ in the statement of PW-2, and also portion marked ~B™ and ~C™, his statement are as per his say. From the spot ASI Konde seized white colour plastic can of five liters, one nylon sari, burnt blouse, piece yellow colour burnt pitty coat and match box. Thereafter, inquest panchnama was carried out. Map was drawn.

43. During his cross examination, he stated that, Police came to know about the incident on the basis of dying declaration at Exhibit-24. The entry of above dying declaration was taken in Police Station Diary. Similarly, the statement recorded by PSI Mr.Noor Mohd. was taken in Police Station as entry No.35 on Exh.29. Except Exhibit-24 and 29, the Police Station has not received any information about the incident. He further stated that, it is true that, as per entry No.17, no cognizable offence was transpired, therefore, they did not record offence at that time. He did not personally record the statement of Manisha. The accused persons were arrested from the Hospital itself on 21st June, 2011. He has not mentioned about condition of door of the house in the spot panchanama.

44. The defence examined Usha Shankar Waman as DW-1 [defence witness]. In her deposition, she stated that, she is residing at Gahukhel. Deceased Manisha was residing near her house at the distance of 30-40 feet. She knows other accused also. Manisha died due to burning incident took place in between 10.00 to 10.50 a.m. At that time, she was in her house, she heard shouts of Manisha and also of accused Nos. 1 to 3. When she rushed towards house of Manisha, at that time accused Nos. 1 to 3 were also running towards the house of Manisha. When they reached near house, the door of house was closed and smoke was emitting from the door. At that time, accused No.1 kicked the door of the house and opened the door. After opening door, she saw that, Manisha was burning. At that time, accused No.1 took water in the pot from the tank kept near house of Manisha and poured water on the person of Manisha. They also poured water on the person of Manisha. Thereafter, accused No.1 asked her husband to bring a tempo. Thereafter, her husband brought Tempo and Manisha was put in Tempo and taken to Nagar Hospital and accused Nos. 1 to 3 also went with Manisha to Hospital. At that time, accused no.4 had gone out of station. Thereafter, her husband had gone to Ghatpimpri to inform about the incident to the parents of Manisha. This witness was cross examined by APP. During her cross examination, she stated that, Manisha was shouting loudly. Due to burn, Manisha sustained burn injuries on face, chest, hands and stomach. Prior to the incident, Manisha had not gone to her parental home. She did not state to Police about the incident. Police came then recorded her statement and statement of her husband. She denied suggestion that, on inquiry with Manisha, she raised fingers towards accused persons and told that, they set her on fire. She further denied suggestion that, it did not happen that, after Manisha came to her matrimonial home within few days, accused Nos.1 to 4 used to quarrel with her and she used to hear the noise of said quarrel. It did not happen that, when deceased used to meet her, she used to tell her that, accused nos. 1 to 4 used to tell her that, she does not know work and asked her to leave the house and used to harass her. She specifically stated that, it is not true that, accused Nos. 1 to 4 poured kerosene on the person of Manisha and set her on fire and killed her. When she was re-examined, she stated that, she came to know about statement of her, recorded by Police after charge-sheet is filed. She had complained to Dy. S.P. Ashti, stating that, Police

have not recorded her statement and prepared her statement on their own accord. She denied suggestion that, accused Nos.1 to 4 poured kerosene on the person of Manisha and set her on fire and killed her. Since she is neighbourer of Manisha, her evidence assumes importance.

45. On re-appreciating the entire evidence, in the light of discussion in the foregoing paragraphs, the dying declaration at Exhibit-24 recorded by the PW-3, Special Judicial Magistrate, cannot form basis for conviction of the accused. It has come in the evidence of PW-5 and PW-6 that, they could not reach to the conclusion that, the death was homicidal, accidental or suicidal. The Bombay High Court while considering the prosecution case based upon dying declaration, in the case of **Shakuntalabai Khairuprasad Joshi and Anr. Vs. State of Maharashtra** (2011 Cri.L.J. 1819) held that, the burn injuries received by the deceased could be accidental, suicidal or homicidal, the prosecution is required to establish homicidal death by bringing positive evidence on record. Therefore, in the present case also, it was necessary for the prosecution to bring on record the positive evidence so as to establish the homicidal death.

Upon perusal of the evidence of PW-7 i.e. father of Manisha, it is abundantly clear that, while recording the dying declarations he was present. PW-7, in his cross examination stated that, he told Manisha as to how statement has to be given to the person, who is recording the dying declaration. Therefore, the dying declaration recorded by PW-3 appears to be result of tutoring by PW-7. The Bombay High Court in the case of **Sunil Kashinath Raimale Vs. State of Maharashtra** (2006 Cri.L.J.589), held that, in case of presence of relatives, possibility of tutoring cannot be ruled out and in that case, the dying declaration cannot be free from doubt.

The evidence of the defence witness namely Usha w/o. Shankar Waman also makes it clear that, the accused persons were not in the house wherein the incident had taken place, but they came running at the place of incident and tried to extinguish the fire by opening the door and pouring water on the person of Manisha. Therefore, the dying declaration at Exhibit-24 cannot form basis of conviction. So far dying declaration at Exhibit-29 is concerned, we have discussed

in detail in the foregoing paragraphs that, why the said dying declaration cannot be believed. The evidence of DW-1 i.e. Usha w/o. Shankar Waman, unequivocally indicates that, the accused were not seen in the house in which the incident had taken place, nor they were involved in the incident as alleged by the prosecution. Her evidence deserves acceptance since she resides nearby house where the incident had taken place.

46. In that view of the matter, the benefit of doubt deserves to be given to the Appellants. Accordingly Criminal Appeal is allowed. The conviction and sentence of the Appellants is hereby quashed and set aside, and the Appellants are acquitted of the offences with which they were charged and convicted. Fine, if any, paid by the Appellants be refunded to them. Since the Appellants are in jail, they be released forthwith, if not required in any other case.

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