

Hariappan Vs. State by Police Inspector, Belthangady Circle

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Court : Karnataka

Decided On : Jul-02-2001

Reported in : 2001CriLJ4286; ILR2001KAR4211

Judge : H.N. Harayan and ;N.S. Veerabhadraiah, JJ.

Acts : [Evidence Act, 1872](#) - Sections 13, 32 and 118; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 307 and 498-A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 313 and 315

Appeal No. : Criminal Appeal No. 1152 of 1998

Appellant : Hariappan

Respondent : State by Police Inspector, Belthangady Circle

Advocate for Def. : Sri. B.C. Muddappa, Additional State Public Prosecutor

Advocate for Pet/Ap. : Sri. M.B. Rajashekar, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

H.N. Narayan, J.

1. The appellant who is convicted for the offences punishable under Sections 498-A and 302 of the IPC and sentenced to suffer imprisonment for life for the offence

under Section 302 of the IPC and R.I. for 2 years for the offence under Section 498-A of the IPC has challenged the judgment of conviction and sentence in this appeal. He was charged and tried for these two offences by the learned II Additional Sessions Judge, D.K., Mangalore.

2. The case of the prosecution in a nutshell is as follows:

The accused-appellant is the husband of the deceased Smt. Shantha. He was a drunkard. He was in the habit of ill-treating his wife. He used to assault her whenever he came home drunk and subjecting her to physical and mental cruelty. On 23-2-1995, Smt. Shantha and her children went to Man Festival in the evening and came back before the school timing of her son P.W. 3, Master Rajendra, son of the accused on the next day morning as the Mari Festival was during night. There was a quarrel between the deceased and the accused in the evening at 7.30 p.m. on that day as the accused did not accompany his wife and children to the Mari Festival. It is alleged that the accused was commanding his wife to leave the house on the other night which she refused. At about 8.00 p.m. when Shantha was feeding her female child which was 8 months old, the accused picked up the child from the hands of the deceased and kept it outside the house. He came back, secured a can containing kerosene and splashed it upon her. When she attempted to run away through the window of the kitchen, he caught hold of her tuft, dragged her inside and set fire to her. She raised hue and cry. After hearing the cries, P.W. 1, Keshava, their neighbour came immediately to that place. He noticed that the accused was standing in front of the house. He questioned the accused as to the cause for the noise. He did not respond. In the mean time, the injured Shantha came out with her children with burn injuries on her body. She narrated the incident to him and he immediately ran towards the Marigudi to bring her mother and brother. He noticed the brother of the injured near Marigudi. When he came back from Marigudi with C.Ws 2 and 10 to the house of the accused, neither the accused nor his wife Shantha were present in that house. Thereafter, the brother of the deceased Smt. Shantha and P.W. 1 went to the house of P.W. 4, the mother of the injured. The injured was not seen there. Then they went to the house of Dejjamma, the sister of the accused where the accused was present with his wife and children. She was immediately taken to the Belthangady hospital

where there was no doctor. She was thereafter taken to the Wenlock Hospital at Mangalore. P.W. 9, Thimmappa N. the Head Constable in Mangalore South Police Station received intimation as per Ext. P. 5 from Wentock Hospital at about 2.15 p.m. on 25-2-1995. Thereafter, he proceeded to Government Wenlock Hospital and saw the injured Smt. Shantha at Ward Nos. 9-11. According to him, she was in a condition to give the statement. He therefore, recorded her statement as per Ext. P. 6. He came back to the Police Station and registered a case in Crime No. 72 of 1995 under Sections 307 and 498-A of the IPC and transmitted the FIR to the Judicial Magistrate First Class, II Court, Mangalore and copies of the FIR to his superiors. Since the place of occurrence was within the Belthangady Police Station limits, he forwarded the copy of the FIR to Belthangady Police Station P.W. 10, Puttaswamaiah, who was working as Sub-Inspector of Police, Belthangady Police Station took up further investigation on 26-2-1995, visited the place of occurrence and drew the spot mahazar as per Ext. P. 3 in the presence of P.Ws. 6 and 7. He seized M.Os. 3 to 6 under Ex. P. 3. On 27-2-1995, he visited the Mangalore Government Wenlock Hospital, contacted the Medical Officer and gave a requisition to the duty Medical Officer to ascertain the condition of the injured Smt. Shantha. P.W. 11, Dr. T. Bhaskar Alva, who was present there issued an endorsement as per Ext. P. 8 certifying that Smt. Shantha was conscious and was fit enough to make a statement. He thereafter recorded the further statement of the injured Smt. Shantha as per Ext. P. 9. He obtained the L.T.M. of the injured Smt. Shantha on Ext. P. 9. On 1-3-1995, he recorded the statement of one Keshava. Jagadeesha and Balakrishna. On 2-3-1995 at 17.38 hours, he received the intimation from Pandeshwara P.S. regarding the death of the injured Smt. Shantha. Then he converted the case for the offence under Section 302 of the IPC and submitted the converted FIR to the Court. On 3-3-1995, he visited the Mangalore Government Wenlock Hospital and conducted the inquest mahazar over the dead body of the deceased in the presence of panchas as per Ext. P. 2. After the inquest, he handed over the dead body to the Medical Officer for P.M. Examination. P.W. 12, Dr. Vishalakshi Hegde, was the doctor who conducted post-mortem examination on the dead body of Shantha and issued P.M. Report as per Ext. P. 13, P.W. 13, D. Dharmaiah, Circle Inspector of Police, Belthangady Circle took up further investigation of this case from the P.S.I. Puttaswamaiah and

after completing the formalities of the investigation, filed the charge-sheet.

3. The accused who was charged for the offences punishable under Sections 498-A and 302 of the IPC denied the charges. In proof of the charges against the accused, the prosecution examined in all 13 witnesses and got marked Exts. P. 1 to P. 16 and produced M.Os 1 to 6. The accused was examined as required under Section 313 of the Cr. P.C. The accused admitted his presence at the time of the incident. According to him, P.W. 1, Keshava came to his house after he extinguished the fire and thereafter, he took his wife to the house of his sister Dejamma and that his wife died as a result of burn injuries. He has not pleaded any specific defence nor has he offered the cause for the burn injuries to his wife. The learned Sessions Judge, upon consideration of the evidence placed on record and certain admissions made by the accused in his statement recorded under Section 313 of the Cr. P.C. held him guilty of the offences alleged against him and passed the impugned judgment.

4. The appellant presented this appeal through jail. Since he pleaded his inability to engage a Counsel of his choice, this Court provided him legal assistance by appointing Mr. M.B. Rajashekar, Advocate to act as Amicus Curiae and assist the Court. We have heard the arguments of Mr. M.B. Rajashekar, for the appellant and Mr. B.C. Muddappa, learned Additional State Public Prosecutor for the State. We have scrutinised the evidence.

5. Mr. M.B. Rajashekar, learned Counsel for the appellant has placed before us three contentions for our consideration. His contentions are (a) that the evidence placed by the prosecution suggests that it is a case of suicide and not homicide (b) that the dying declaration should have been recorded either by the doctor or by a Magistrate and that the dying declaration recorded by P.W. 9, Thimmappa N., the Head Constable in Mangalore South Police Station and P.W. 10, R. Futtaswamaiah, the Sub-Inspector of Police, Belthangady Police Station as per Exts. P. 6 and P. 9 cannot be relied upon in the absence of any certificate by the Duty Doctor as to the competency of the injured to make such statement (c) the evidence of P.W. 3, Master Rajendra, a child witness is not safe to convict the accused as it is a heinous offence of murder. If the entire evidence is evaluated

with utmost care, one can draw an inference that it is a case of suicide and not homicide. Therefore, the conclusion reached by the learned Sessions Judge is not really sustainable in law. Therefore, the judgment of conviction and sentence recorded by the learned Sessions Judge is liable to be set aside.

6. Mr. B.C. Muddappa, learned Additional State Public Prosecutor in rebuttal of these contentions contended that there are no merits in the contentions canvassed for consideration by the appellant's Counsel. It is his submission that the evidence of P.W. 1 coupled with the evidence of P.W. 3 and the conduct of the accused who restrained P.W. 1 from pouring water on the injured who sustained burn injuries coupled with the dying declaration recorded by P.Ws. 9 and 10 falsify the defence theory that it is a case of suicide. There is no reason to discard the evidence of P.W. 3, the child witness as the evidence of P.W. 3 does not suffer from any omissions or contradictions. It is true that the evidence of a child witness often suffers from tutoring. But there is no such circumstances established in this case.

7. Re further submitted that the dying declarations recorded by P.Ws. 9 and 10 are admissible under Section 32 of the Evidence Act. It would have been more authenticated if the Police Officer had summoned the Magistrate for recording the dying declaration of the injured. But that does not take away the evidentiary value of the dying declaration recorded by the Investigating Officers P.Ws. 9 and 10. Therefore, the totality of the evidence on record clearly establishes the guilt of the accused. The learned Sessions Judge who has scrutinised the evidence on record with utmost care reached the correct conclusion and that there are no grounds calling for interference in this judgment.

8. In view of these submissions, the short question that arises for consideration in this appeal is, whether the judgment of conviction and sentence recorded by the learned Sessions Judge is not sustainable in law?

9. It is admitted by the accused in his statement before the Court that his wife Shantha died as a result of burn injuries. P.W. 12, Dr. Vishalakshi Hegde, who conducted the post-mortem on the dead body of Smt. Shantha noticed that the whole skin was destroyed on the upper part of the chest, face, front of neck and upper arms both and portion of back and a portion of the upper part of the

abdomen. In her opinion, that the death was due to septicaemia as a result of burns. It was elicited that the injuries found on the body was about 40% and there were burn injuries all over the body except on the lower leg. This evidence does not solve the contention whether the death of Smt. Shantha was homicidal or suicidal. We have necessarily to examine the evidence of P.W. 1, P.W. 3 and the dying declarations Exts P. 6 and P. 9.

10. We would like to examine first the evidence of P.W. 3, Master Rajendra, who is the son of the accused and the deceased. He was aged about 7 years at the time of giving evidence. He was examined roughly after one year and three months from the date of the incident. He was 6 years old at the time of the incident. At the time of giving evidence, he was studying in the Primary II Standard. After putting preliminary questions, the learned Sessions Judge was satisfied about the competency of the child witness who was in a position to give answers to the questions posed to him. His evidence shows that the deceased had three children out of which one female child by name Lokeshwari died prior to the date of incident. The third child was about one year at the time of the incident. P.W. 3 was the first child. His father and mother were residing at Kombarody with two children. His grand-parents were residing little away from their house. Dejamma, the younger sister of the accused was residing at a little distance away from the house. He was attending I Standard at that time. At the time of giving evidence, he was staying with his uncle Shivappa, who was the younger brother of his mother. So far as the incident is concerned, this witness could not recollect the date and month or the year. On that day, he was at home. His father, mother and his younger sister were also present. On that day, except his father, all of them had gone to Mari Festival. The Mari Festival was during night time. After attending the Mari Festival in the night, they returned to their house in the morning. His mother asked his father as to why he did not come to the Mari Festival. There was a quarrel between them. His father took a can containing kerosene from the plank inside the house and poured the kerosene on her mother. She tried to run out of the house as she was afraid. At that time, his father closed the door. At that time, his sister was sucking breast milk. His father pulled out the child and put her out of the house. Thereafter, his father poured kerosene on his mother and thereafter, he shut the door of the house. His mother ran to the kitchen and tried to jump out of

the kitchen through the window. His father caught hold of the tuft, took out match box from his shirt pocket and lighted the matchstick and set fire to her. His mother raised cries. He also raised cries. On hearing the cries, P.W. 1-Keshava came there from the rubber estate which was visible from their house. P.W. 1 tried to pour water on his mother. His father prevented pouring water on his mother. Then his father ran away. Thereafter, P.W. 1, Keshava poured water on his mother. By that time, his mother had sustained injuries all over her body. Thereafter, he and his mother went to the house of Dejamma. From Dejamma's house his mother was taken to the hospital in a jeep. Dejamma accompanied his mother to the hospital. He and his sister stayed in the house of Dejamma. It is elicited that the police questioned him and recorded his statement. His father was doing cooly work. They had gone to the Mari Festival on the previous evening at about 5 o'clock and returned before it was time for him to go to school. He had gone to the school on that day. Before, he went to the school, his mother had asked his father as to why he has not come to the Mari Festival. The galata took place in the evening. His father was very much present when he returned from school. His mother was grinding masala at that time. The accused did not take food in the night. His mother asked him to call his father for taking food when his father was sitting in the verandah. His father told that he was not taking food and asked him to go and take food. Accordingly, he went inside the house to take food. He denied the suggestion that when he went inside the house, his mother was on flames. When he went inside the house, his mother was still grinding masala. He remained in the house next to his mother. At that time, his sister was in the cradle. The grinding stone was in the kitchen. After grinding the masala. his mother took the child from the cradle and was feeding her with breast milk. Even at that time the exchange of words were going on between his parents. His mother called his father to take food. His father declined to take food. They also did not take food on that night. He has further stated that his father brought his sister to the house of Dejamma. He has further stated that before his mother could reach the house of Dejamma, nobody else came there. He has denied the suggestion that he was taken to the office of the Public Prosecutor. It is elicited in the cross-examination that the kerosene was in the kitchen. When the exchange of words were going on between his mother and father, his mother was in the kitchen and his father was

sitting outside the house. Ho has denied the suggestion that his father tried to put out the fire when his mother ran out of the house with flames. His mother was in the kitchen when he set fire to his mother. The child was taken outside the verandah before the kerosene was poured. He remained inside the house when his mother was in flames. After she reached the house of Dejamma, she was almost unconscious. He has denied the suggestion that his father did not set fire to his mother. This witness had admitted that the police did tell him to state before the Court that it was his father who set fire to his mother. This evidence of P.W. 3, Master Rajendra, a child witness is assailed by the learned Counsel for the appellant on the ground that the evidence is infirm and he is a tutored witness. We have scrutinised this evidence with utmost care. The witness has admitted in his cross-examination that he was taken to the Public Prosecutor's Office before he was taken to the Court Halt. The witnesses going to the offices of the Public Prosecutors before they were actually produced before the Court for evidence is not a forbidden practice. Therefore, that circumstance alone cannot create any infirmity in the evidence of this witness. The witness has also admitted that the police did tell him to depose against his father. But the child witness has clearly denied that he was deposing falsely at the instance of the police.

11. The learned Sessions Judge commenting upon the evidence of the child witness has stated that there was some confusion in the mind of this child when he gave answers during cross-examination and the contradictions in the evidence cannot be made much of having regard to the age of the witness. Even if the evidence of P.W. 3 is eschewed, we are of the opinion that there is sufficient evidence against the accused about his having poured kerosene and setting fire to his wife Shantha.

12. The contradictions pointed out by the learned Counsel which we have noted are very trivial. But on a careful scrutiny of the evidence of P.W. 3 and P.W. 13, who recorded the statement of P.W. 3 on 6-3-1995 shows that no omissions and contradictions are elicited in the cross-examination and are marked through the Investigating Officer. Therefore, we have not noticed contradictions except eliciting in the cross-examination that the child was taken to the police station and was tutored to depose in the fashion in which the prosecution wanted. But we are

surprised to find that the statement of this witness was recorded by the Circle Inspector of Police only on 6-3-1995. Though the prosecution has not offered any explanation for the delay in recording the statement of this important witness, the cross-examining Counsel elicited an explanation for this delay in the evidence of P.W. 10. P.W. 13 has not offered any such explanation though he took up further investigation. Though there is delay in recording the statement of this important witness, we still find that the evidence of this witness is quite natural and appears to us to be cogent and firm. This child witness is subjected to cross-examination. But we do not find any such distortions in his evidence. We have come across evidence of tutored child witnesses repeating the story like a parrot. But we do not find any such circumstance in the evidence of P.W. 3. We assured ourselves of the reliability of such evidence. We have also corroboration from the other evidence placed by the prosecution, and this corroborative material placed on record makes this evidence of the child witness reliable.

13. We have referred to the evidence of P.W. 1, Keshava who came to the house of the accused immediately after hearing the cries of Smt. Shantha and her child. His house is at a distance of about a few yards from the house of the accused and his presence at the time of the incident is therefore natural. His evidence shows that he came back home at about 7.00 p.m. after his coolie work. At about 8.00 p.m. he heard some noise from the side of the house of the accused. He therefore ran towards the house of the accused. The accused was in his house at that time. He asked him as to the cause for such noise. The accused did not respond. His wife Shantha came out from the house. Her clothes and her body were burnt. She was crying (burning) and she requested him to pour water on her body. When he asked her as to what had happened, she told him that her husband had poured kerosene on her body and set her on fire. He asked her why did he do that. She told that her husband was trying to put her out of the house right from 4.00 p.m. that evening and that she did not go out of the house as commanded by her husband. Thereupon, her husband poured kerosene and set fire. He has further stated that when he tried to pour water on her body, the accused prevented him from doing that. The accused told him that Shantha should die of those injuries. Thereafter, he went to the house of the father of the accused which is at a distance of about 150 metres from the house of the accused. There was nobody in

that house at that time. He thereafter went to the Marigudi at Yedya as there was a 'Man Pooja' that evening. None of the brothers of the accused were seen near the Marigudi. Only C.Ws. 2 and 10 were there near the Marigudi, He reported the matter to them. They accompanied him to the house of the accused. At that time, neither the accused nor his wife Shantha were present in that house. From there they went to the house of C.W. 4, Dejamma where they found the accused, his wife Shantha, sister Dejamma, the brothers of the accused and the parents of the accused. Dejamma told that a jeep be secured and Shantha should be taken to hospital. Thereafter, P.W. 1 and Somaiah went to Yedya and brought a jeep. Thereafter, C.Ws. 4 to 7 took Shantha in the jeep to Belthangady Hospital. He has also deposed that when he went to the house of the accused after hearing the noise, he found the accused, his wife Shanthamma and their two children in the house. This witness is no doubt cross-examined at length. But nothing worthwhile is elicited in the cross-examination. He has stated in his evidence that there was a festival at Marigudi on that day and that the Marigudi is at a distance of about 1 K.M. from the house of the accused. He has also denied the suggestion put to him in the cross-examination that when he went near the house of the accused, on hearing his voice Shantha and her children came out. Therefore, the scrutiny of the evidence of P.W. 1, it does not show that it is a tainted evidence. Similarly, a close scrutiny of the evidence of P.W. 1 and P.W. 3 clearly show that their evidence is not shaken in the cross-examination and they fully corroborate the incident. We have examined the veracity of the child witness who withstood the test of cross-examination. No inherent defect is pointed out in his testimony. The mere fact that he was taken to the police station and then to the office of the Public Prosecutor does not make this evidence otherwise doubtful. Therefore, we find no much substance in the contention of the learned Counsel.

14. That takes us to the last contention viz., whether the two dying declarations recorded by P.Ws. 9 and 10 are admissible under Section 32 of the Evidence Act and whether the Court can safely rely upon such evidence

15. Section 32 of the Evidence Act reads as follows:

'32. Cases in which statement of relevant fact by person who is dead or cannot be found etc., is relevant.--Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

- (1) when it relates to cause of death;
- (2) or is made in course of business;
- (3) or against interest of maker;
- (4) or gives opinion as to public right or custom, or matters of general interest;
- (5) or relates to existence of relationship;
- (6) or is made in will or deed relating to family affairs;
- (7) or in document relating to transaction mentioned in Section 13, clause (a);
- (8) or is made by several persons and expresses feelings relevant to matter in question'.

16. Insofar as the 1st case is concerned, we are concerned with the fact relating to cause of death when the statement is made by a person aa to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question.

Illustration (a) to Section 32 of the Evidence Act deals with the question, whether A was murdered by B or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B, or, the question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

It is true that the statement must be made in contemplation of death. But whether the statement is made in contemplation of death, in a particular case is difficult to infer. The provisions of Section 32 of the Evidence Act are therefore distinguished from the statement recorded under Section 161 of the Cr. P.C. The statements made under Section 32 are untested statements before the Court. The Court has to examine these statements with utmost care and try to find out some corroboration. The decisions of the Apex Court have clearly laid down that a conviction can be based solely on the dying declaration if it is firm and reliable and passes the test of scrutiny.

17. The contention of the learned Counsel for the appellant is that the Investigating Officer should have summoned the Doctor or a Magistrate to record the statement instead of recording the statement himself. Learned Counsel drew our attention to the nature of other statements recorded by P.W. 10 as per Ext. P. 9 which does not satisfy the legal requirement. The ratio laid down by the Apex Court in the case of Dalip Singh v State of Punjab, is pressed into service to reject the alleged two statements made by the deceased before the Police Officers, P.Ws. 9 and 10. The Apex Court in the said case made the following observations:

'Although a dying declaration recorded by a Police Officer during the course of investigation is admissible under Section 32 of the Evidence Act, in view of the exception provided in sub-section (2) of Section 162 of the Criminal Procedure Code, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the Court as to why it was not recorded by a Magistrate or by a Doctor. The practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. This is not to suggest that such dying declarations are always untrustworthy, but what has to be emphasised is that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the Police Officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method'.

Reliance is also placed by the defence Counsel on the decision of the Supreme Court in the case of Balak Ram v State of Uttar Pradesh, wherein it is held that it is

not prudent to base conviction on the dying declaration made to Investigating Officer, particularly when it is not signed by declarant or the witnesses. These judgments were placed before the learned Sessions Judge also for his consideration. The learned Sessions Judge when referring to Exts. P. 6 and P. 9 has observed that even if Exts. P. 6 and P. 9 are taken out of consideration as dying declarations, there is one more dying declaration made to P.W. 1 by Shantha to the effect that it was her husband who set her on fire pouring kerosene. The child witness P.W. 3 has also stated that it was his father who set the mother on fire. The learned Sessions Judge has not answered these questions specifically in his judgment.

18. The doctor before whom Ext. P. 6, the first statement of the injured was recorded has not attested Ext. P. 6. It is the case of the prosecution that P.W. 9, Thimmappa, H.C. on receipt of the information Ext. P. 5 visited the Ward Nos. 9-11, gave a requisition to P.W. 11 who was present there who endorsed on it about the condition of the patient. According to him, he was very much present when the police recorded the statement of Shantha. Admittedly, he has not affixed his signature on Ext. P. 6. Ext. P. 6 was not shown to him. The conduct of both these officers viz., the Head Constable and the Doctor goes to show that they have exhibited utmost carelessness in this regard. Recording a dying declaration is a sacred act of the Police Officer in the presence of a doctor. P.W. 11, who claims to have been present at that time has not cared to attest the dying declaration. The conduct of P.W. 10, the Sub-Inspector of Police who visited the hospital subsequently on 27-2-1995 is no better. According to him, he issued a requisition Ext. P. 8 to P.W. 11 and he endorsed on it stating that the patient Shantha is in a fit condition to make statement between 1 p.m. and 2 p.m. Therefore, the 2nd dying declaration viz., Ext. P. 9 in our opinion is not in conformity with the principles laid down by the Supreme Court. Therefore, Ext. P. 9 in particular in our opinion has not passed the test of legal scrutiny and the legal norms laid down for recording the dying declaration. It is in this background, the Apex Court in Dalip Singh's case, supra, cautioned the prosecuting agencies including the Investigating Officers to desist from recording the dying declaration by themselves instead of requesting the Medical Officers or the Magistrates to record such dying declarations. Where the dying declarations are recorded by the Investigating

Officers themselves, the prosecution has to satisfy the Court as to why it was not recorded by a Magistrate or by a Doctor. An element of authenticity can be seen if a dying declaration is recorded by a Duty Doctor or by a Magistrate. Though these norms are laid down by the Supreme Court, the Investigating Officers are not taking these guidelines with all its strictness. Number of criminal cases ended in acquittals because of the failure of the Investigating Officers to comply with the judgments of the Apex Court and this Court. In our opinion, these dying declarations are not reliable as they are not recorded in conformity with Jaw.

19. However, as observed above, the evidence of P.W. 3, Master Rajendra and P.W. 1, Keshava are more reliable as they have withstood the testimony and passed the test of careful scrutiny.

20. The accused has admitted his presence at the time of the incident and according to him, he has accompanied his wife to the house of his sister Dejamma. He has not stated anything further. It is in this background, the Court expects to offer some plausible explanation. The Apex Court in the case of Ganeshi Lal v State of Maharashtra, held that when the death was caused while the deceased was in the custody of the accused, the accused is obliged to give a plausible explanation for the cause of death in his statement under Section 313 of the Cr. P.C. When the accused failed to offer explanation as to how exactly Shantha caught fire, his conduct shows his guilty mind. Therefore, though the judgment of the learned Sessions Judge does not specifically state that the dying declaration is corroborated by the other evidence of P.Ws. 1 and 3 and though we reject the so-called dying declaration Ext. P. 9, we are satisfied that the other evidence produced by the prosecution is quite satisfactory and reliable and therefore, the conclusion reached by the learned Sessions Judge in this regard is quite justifiable. We do not find good grounds for interference with the judgment of the learned Sessions Judge.

The appeal therefore fails and it is accordingly dismissed.

21. The legal fee of the Amicus Curiae is fixed at Rs. 1,000/-.

