
(2005) 09 BOM CK 0133
In the Bombay High Court
Case No : Criminal Appeal No. 152 of 2000

Hanumant Karbhari Karale	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 504, 506

Citation : (2006) 1 DMC 842

Hon'ble Judges : S.B. Deshmukh, J; R.S. Mohite, J

Bench : Division Bench

Advocate : S.V. Sudrik, for the Appellant; N.H. Borade, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

R.S. Mohite, J.—This appeal filed by the appellant, original accused Hanumant Karbhari Karale (hereinafter referred to as "the accused"), impugns a judgment and order dated 28.2.2000 passed by the learned 3rd Additional Sessions Judge, Ahmednagar, in Sessions Case No. 220 of 1999, convicting the accused for an offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life.

2. The brief facts of the prosecution case were as under:

(a) Deceased Ranjana Bhima Kadam, who was a widow, was working as a Peon in the milk dairy run by Ahmednagar District Cooperative Milk Society. Her husband Bhima had expired about five years prior to the incident which occurred on 10.8.1999. She was residing in a residential area known as "Bhutkar Wadi" Bhingardive Mala in Ahmednagar town. Her three children were (i) PW 5 - Avinash alias Malhari aged 13 years, (ii) Sachin and (iii) Sunny. The accused Hanumant was also working as Peon on the same milk dairy where the deceased used to work. The accused and the deceased developed an illicit relationship. About 7 to 8 months prior to the incident deceased Ranjana gave an amount of

Rs. 50,000 to the accused on his request, by way of hand loan for purchasing a motor cycle. After some days, she started demanding back this amount but the accused was not returning the same to her. There was disagreement regarding non-refund of the aforesaid amount by the accused to the deceased.

(b) The incident in question took place at about 2.30 p.m. on 10.8.1999. On that day at about 2.30 p.m. the accused Hanumant came to the house of Ranjana, On his arrival Ranjana asked him to return her money. This resulted in a quarrel between the two and the accused told her that he would not return her money and she may do whatever she wants. After saying so, the accused poured kerosene from a tin lying in the house on the body of deceased Ranjana, thereafter removed a match box from his pocket and set her on fire with a match stick. Ranjana started screaming loudly. The accused then put out the fire with the help of a chadar which was lying there and ran away from the house. The neighbours gathered there and some one amongst them sent for her nephew Vijay Kadam who was a young boy aged 13 years. Vijay was called for from his school. At about 3 p.m. Avinash son of the deceased also came back from the school for lunch and found his mother lying in a burnt condition. By this time about 8/9 people from the locality had gathered there. Deceased Ranjana told Avinash that the accused who used to deliver milk at their house, had poured kerosene on her body, set her on fire and run away. Thereafter, Avinash and Vijay put the deceased in a rickshaw and took her to the Civil Hospital at Ahmednagar.

(c) The case papers indicate that the deceased was brought to the Civil Hospital at about 3.30 p.m. on 10.8.1999. The hospital record indicates that at about 3.30 p.m. a clinical note was made recording the history of the incident as accidental burns.

(d) The evidence indicates that this history was recorded by PW 8 Dr. Mohan Shankar Gavai who was then working as Incharge Doctor at the Civil Hospital at Ahmednagar. This entry further indicates that Ranjana was brought to the hospital by her son Avinash alias Malhari (PW 4). About 5 to 10 minutes after the deceased being brought to the hospital, her husband's brother Laxman and his son Raosaheb also came to the hospital.

(e) The case papers further indicate that at about 4.20 p.m. on that day, Vijay Kadam -- nephew of the deceased -- was informed that the condition of Ranjana was serious. His signature was taken on the case papers below an endorsement that if anything happened to her he would not have any grievance. At about 4.20 p.m. an injection of Phenargan was admittedly administered to Ranjana. Dr. Mohan Gavai has admitted in his evidence that this injection was a sedative as well as a pain killer and the effect of this injection would remain for about six hours.

(f) The record indicates that Raosaheb Kadam went to meet Rajesh, brother of the deceased, and met him at about 5 p.m. He informed Rajesh that his sister

Ranjana had sustained burn injuries and admitted in the Civil Hospital at Ahmednagar. PW 4 Rajesh went to the Civil Hospital, Ahmednagar. He reached the said hospital at about 5.15 p.m. Deceased Ranjana made an oral dying declaration to her brother Rajesh informing him that Hanumant Karale who used to deliver milk had been given Rs. 50,000 by her some 5-6 months back for purchasing motor-cycle. When she had asked the accused to return the amount the accused had flatly refused, abused her, had poured kerosene on her body from a tin and told that he would finish her permanently. He had then ignited a match stick and set her on fire. Thereafter, he tried to extinguish the fire with a chadar lying there in order to save her. She had raised a hue and cry and on her shouting the neighbours gathered there. Thereafter the accused Hanumant ran away from the spot.

(g) At about 6.30 p.m., a Ward Doctor, who has been examined by the prosecution, again recorded in the case papers a history of the accidental burns by explosion of a stove. This entry also records that the general condition of the deceased had become low though she was conscious and oriented, her pulse being 102.

(h) The record indicates that in the meanwhile the police had also arrived at the hospital within about 10 minutes of Ranjana being brought to the hospital. Police Station Officer Bhabhal gave written directions to PW 9 Shivaji Natha Sathey, Police Head Constable, asking him to record the dying declaration of Ranjana. Sathe addressed a letter (Exhibit 21) to the Executive Magistrate PW 6 Ashok Vithalrao Bhor. This letter was written by Sathe at 7.45 p.m. In this letter, there is no mention of the fact that the accused had caused burn injuries on the body of Ranjana.

(i) At about 8 p.m. the Special Executive Magistrate PW 6 Ashok Bhor arrived at the hospital. He met PW 8 Dr. Mohan Gavai and showed him the letter issued to him by the Police (Exhibit 21). Dr. Mohan examined Ranjana and told Ashok Bhor (PW 6) that she was in a condition to give statement. Dr. Gavai made an endorsement to this effect in the case papers. The Executive Magistrate Ashok then started recording the statement of Ranjana. He asked her few questions in question and answer form. Thereafter, he asked her as to what had happened, to which Ranjana informed him that the accused was known to her, she had given a hand loan of Rs. 50,000 to the accused, she had illicit relations with the accused, that on 10.8.1999 at about 2.30 p.m. the accused came to her house, she demanded her money and due to this reason a quarrel resulted. The accused told her that he would not return her money and she may do whatever she wanted. Saying so, he had poured kerosene on her body and set her on fire with a match stick. He had thereafter run away from the spot. According to the Executive Magistrate Ashok, while he was recording the statement of deceased, Dr. Gavai had gone on his rounds. He completed recording of the statement of Ranjana by about 8.30 p.m. By that time Dr. Gavai came back and again examined the deceased and made a second endorsement on the dying declaration noting that

the patient was conscious. The case papers indicates that Dr. Gavai made an endorsement at 8.35 p.m. in the case papers to the effect that the patient was conscious while giving the statement. The Executive Magistrate obtained a thumb impression of the deceased below her dying declaration though he did not attest the same.

(j) At 8.45 p.m., on 10.8.1999, PW 10 Jyoti Karandikar, Police Sub-Inspector attached to Topkhana Police Station, was contacted by the Police Head Constable along with the dying declaration recorded by PW 6 Ashok Bhor. PSI Jyoti read the dying declaration. Thereafter, she along with her writer Constable went to the Civil Hospital, Ahmednagar and met Ranjana in the Burns Ward. PSI Jyoti made inquiry with Ranjana as she found her to be conscious and recorded her statement. The statement was written by the writer Constable as per the version of Ranjana. PSI Jyoti read out her statement to the deceased and thereafter obtained a thumb impression of the deceased on her statement. The statement was also signed by PSI Jyoti. She then returned to the police station and registered Crime No. 165 of 1999 for the offences punishable under Sections 307, 504 and 506 of the Indian Penal Code. She then commenced the investigation.

(k) On 11.8.1999 PSI Jyoti visited the scene of the offence and drew a spot Panchanama. The record indicates that the said Panchanama was drawn between 7 and 8 a.m. and as many as five objects were seized from the scene. These articles were (i) pieces of burnt saree and petticoat, (ii) green-coloured kerosene tin, (iii) broken steel internal container of a pressure cooker emitting strong odor, (iv) one chadar, and (v) two burnt pieces of match stick. The Panchanama further indicated that on the floor one iron stove was found. It was found that cap of the kerosene tank of the said stove had come out of its socket and fallen down. It appears that this stove and the separated cap, though found on the spot was not seized under the spot Panchanama. These articles were seized by PSI Jyoti under a spot Panchanama (Exhibit 12). On 11.8.1999, PSI Jyoti recorded the statements of nine witnesses.

(l) On 12.8.1999 at about 2.20 p.m. PSI Jyoti arrested the accused. On the same night deceased Ranjana expired in the hospital. PSI Jyoti then added Section 302 of the Indian Penal Code to the crime. She drew an inquest Panchanama of the dead body (Exhibit 11). She recorded the supplementary statements of the witnesses and issued a letter to the Medical Officer to conduct a post-mortem on the dead body of Ranjana.

(m) The post-mortem on the body of Ranjana was conducted by PW 3 Dr. Seema Bhaskarrao Deshmukh at the Civil Hospital between 11 am and 12 noon on 12.8.1999. During the post-mortem it was found that Ranjana had suffered 90% superficial to deep burns. The cause of death was cardio respiratory failure due to septicemia shock due to 90% superficial to deep burns.

(n) On 12.8.1999, 13.8.1999 and 15.8.1999, PSI Jyoti recorded further

statements. On 16.8.1999 she wrote a letter to the Milk Dairy (Exhibit 34) in order to find out whether Ranjana had borrowed any money from the society. On 18.8.1999 she received a letter dated 17.8.1999 from the Milk Credit Cooperative Society indicating that an amount of Rs. 35,000 had been sanctioned in her favour for house loan and after deducting her previous dues in respect of the previous loan, a cheque for a amount of Rs. 14,000 was given on 18.10.1998. A reference to another emergency loan of Rs. 900 given to Ranjana on 13.12.1997 was also made. PSI Jyoti caused a map of the scene of the offence to be made. She made inquiries with the RTO, Ahmednagar, as to whether any motor cycle had been registered in the name of the accused. She, however, did not get any reply from the RTO. She sent the Muddemal articles to the Chemical Analyser at Aurangabad with Police Constable Athare, along with her covering letter. Police Constable Athare carried these articles to the Chemical Analyser. On receipt of the report of the Chemical Analyser, PSI Jyoti filed a charge-sheet in the Court.

3. On the case being committed to the Sessions Court, charge came to be framed and the trial commenced. On behalf of the prosecution, ten witnesses were examined to prove the prosecution case. PW 1 Dattu and PW 2 Babu were two Panch witnesses examined to prove the spot Panchanama. PW 3 was Dr. Seema Deshmukh who had conducted the post-mortem. PW 8 Dr. Mohan Gavai was examined to indicate the condition of Ranjana while giving her dying declaration to the Executive Magistrate. PW 6 Ashok Bhor was examined as the Executive Magistrate who had recorded the dying declaration of Ranjana. PW4 Rajesh is the brother of Ranjana and he was examined to prove the oral dying declaration said to have been made to him. PW 5 Avinash Kadam who was the son of deceased Ranjana was examined to prove the oral dying declaration said to have been made by the deceased i.e. his mother to him. PW 9 Police Constable Sathe was examined to indicate that he had issued a letter to the Special Executive Magistrate for recording the dying declaration. PW 10 PSI Jyoti was examined as the Investigation Officer.

4. The defence did not lead any evidence. The defence was of total denial. It was, inter alia, contended that the accused that he had been detained by the police from 11.8.1999 and that he had been falsely involved in the case.

5. On considering the aforesaid evidence, both oral and documentary, produced on behalf of the prosecution, the Trial Court passed the impugned judgment and order convicting and sentencing the accused as aforesaid.

6. On behalf of the defence, it was contended that the Trial Court ought to have discarded both the oral and the written dying declarations. If indeed oral dying declaration has been made to PW 4 Rajesh-brother of deceased Ranjana and PW 5 Avinash - son of the deceased, these witnesses would have disclosed the involvement of the accused to the police who were admittedly present in the hospital. It was contended that admittedly brother-in-law of deceased Ranjana by name Laxman and his son Raosaheb came to the hospital immediately after

her being brought to the hospital. However, these important and vital witnesses were not examined by the prosecution, especially when it was a prosecution case that Ranjana was giving dying declaration. So far as the written dying declarations are concerned, it was contended that Ranjana was admittedly given a sedative i.e. injection of Phenargan at 4.20 p.m. and the doctor had admitted that the effect of this injection would remain for about six hours. Both the written dying declarations recorded by the Special Executive Magistrate and PSI Jyoti were, therefore, recorded while the patient was under the influence of a sedative. It was contended that insofar as the written dying declaration recorded by the Special Executive Magistrate was concerned, the thumb impression on the said document had not been attested by the Executive Magistrate Shri Ashok Bhor. The main portion of the same was not in question and answer form. Admittedly, Dr. Gavai was not present at the time of recording the dying declaration as he was on his round. Yet Dr. Gavai had made an endorsement that Ranjana was conscious while giving her statement. That an attempt was made by PSI Jyoti to verify the truth of the contents of the dying declaration during the investigation but no material could be found to indicate that Ranjana had any money in her bank account to give loan of Rs. 50,000 to the accused. Similarly, no motor cycle was found to have been purchased by the accused. It was contended that there were major discrepancies in the two written dying declarations as well as the two oral dying declarations. Independent witnesses who had admittedly gathered at the house of the deceased had not been examined. That the stove and cap of its tank had not been deliberately seized though they were an important pieces of evidence. That all these factors, cumulatively, cast a grave doubt upon the truth of the dying declarations and the prosecution story,

7. The Additional Public Prosecutor supported the reasoning given by the Trial Court and pointed out that the Executive Magistrate Ashok Bhor was an independent witness who had no reason to record a false dying declaration. That he had taken all necessary precaution by obtaining the opinion of Dr. Gavai regarding the condition of the deceased, both at the start of recording her dying declaring as well as after the recording of the dying declaration was completed. He contended that the dying declarations recorded by the Executive Magistrate, if found acceptable could be made the sole basis for convicting the accused. That PSI Jyoti had recorded a second dying declaration of the deceased immediately after the first one was recorded. This second written dying declaration was along the lines of what the deceased has stated in her first written dying declaration made to the Executive Magistrate. It was argued that the report of the Chemical Analyser indicated the presence of kerosene residue on the clothes of the deceased. There were no cogent reasons to disbelieve the written and oral dying declarations made by Ranjana. It was urged that the appeal be dismissed on merits.

8. After hearing both the sides and perusing the record, in our opinion, the appeal will have to be allowed for the reasons which are enumerated

hereinbelow:

9. The case of the prosecution rests upon three oral dying declarations and two written dying declarations recorded by PW 6 Ashok Bhor, Executive Magistrate and PW 10 PSI Jyoti. As regards the two dying declarations said to have been made to PW 5 Avinash, there are several reasons for doubting that such oral dying declarations were made to him. As per the evidence of Avinash he returned from the school at 3 p.m. to find that his mother had suffered burn injuries. She made a dying declaration to him and thereafter he along with his cousin brother Vijay removed his mother to the Civil Hospital. This oral dying declaration said to have been made to PW 5 Avinash was, therefore, made between 3 p.m. and 3.30 p.m. to 10.8.1999. To prove this dying declaration, firstly the prosecution could have examined Vijay but for the reasons best known to the prosecution Vijay has not been examined. Further admittedly PW 5 Avinash along with Vijay had brought the deceased to the Civil Hospital. If a dying declaration had been made by the deceased Ranjana to Avinash, neither Ranjana nor Avinash could have given the story of accidental burns. We have in mind the fact that unlike a case of burning by the husband this is a peculiar case where the accused or his family members were not in the hospital along with the deceased. The very fact that at 3.30 p.m. the history of accidental burns was given in the record was indicative of the fact that an oral dying declaration indicating a homicidal death must not have been made to Avinash who brought Ranjana to the hospital. It must be remembered that we do not have any evidence to indicate the state of mind of the deceased between 3 and 3.30 p.m. In the absence of such evidence, this oral dying declaration must be carefully screened before it is accepted. Avinash has further stated in his evidence that several neighbours were present at the spot when he arrived from the school. In his cross-examination he has stated that they must have been 8 to 10 present at the spot. None of these independent persons are examined as witnesses to prove the oral dying declaration said to have been made to PW 5 Avinash. Avinash stated in his evidence that within 5 to 10 minutes of his mother being brought to the hospital by him and Vijay, their uncle Laxman also came there. He has also stated that his uncle's son Raosaheb also came there and his mother once again told him that Hanumant had poured kerosene on her body and set her on fire and ran away. His mother also told him that the accused had taken Rs, 50,000 from her and was not-repaying that amount. The second oral dying declaration made to Avinash is also not acceptable firstly because the exact time when this was made by the deceased was not brought on the record. The mental condition of the deceased when this second dying declaration was made is also not brought on record. Further neither Laxman nor his son Raosaheb were examined to prove the making of this oral dying declaration.

10. PW 4 Rajesh, brother of the deceased, talks of an oral dying declaration made to him at about 5.30 p.m. on 10.8.1999. We hesitate to place any reliance on this second dying declaration said to have been made by Ranjana to Rajesh. Avinash has admitted in his cross-examination that he was in the hospital till 8

p.m. However, he does not specifically talk about any dying declaration being made by his mother to Rajesh. We have noted that the case papers indicate that at about 4.20 p.m. i.e. just about an hour prior to the alleged oral dying declaration made to Rajesh, the deceased was given a sedative i.e. injection of Phenargan. Dr. Mohan Gavai admitted in his evidence that the effect of the injection would last for about six hours. It is further observed that admittedly the police also came to the hospital within 10 minutes of the body of Ranjana being brought there by Avinash and Vijay. If this was so and if indeed any oral dying declaration was made by Ranjana to Avinash or Rajesh then this fact would have definitely been informed by these persons to the police. It is nobody's case that there was any disclosure made by Avinash or Vijay to the police. It is admitted by Avinash that no disclosure was made by him till his statement was recorded after the death of Ranjana on 12.8.1999. Rajesh has also not made any disclosure to the police about what he learnt from alleged oral dying declaration. The non-disclosure of these facts at an early point of time to the police is one more factor which weighs in our mind. Yet another factor is the fact that at about 6.30 p.m. there is yet another endorsement in the case papers relating to the death of the deceased being accidental due to bursting of a stove. According to P.W. 8 Dr. Gavai, this endorsement was not made by him but it was made by the Ward Doctor whom he could not name. This entry at 6.30 p.m. made several hours after the deceased was admitted to the hospital and giving three oral dying declarations appears to have made when her son and other relatives were present in the hospital. By 6.30 p.m. even Rajesh had arrived at the hospital. He talks of Ranjana making a dying declaration to him at 5.30 p.m. How then did this endorsement of accidental death by bursting of stove come to be recorded in the case papers at 6.30 p.m. The prosecution ought to have answered this question. It has made no attempt to do so. This is a circumstances which strongly supports the defence story of death being caused by bursting of stove. This also casts a grave doubt on the genuineness of the oral dying declarations said to have been made by the deceased to PW 5 Avinash and PW 4 Rajesh who were present in the hospital prior to this endorsement being made. Cumulatively all these circumstances create a grave doubt about the oral dying declarations sought to be relied on by the prosecution in this case.

11. This brings us to the next question as to whether the written dying declaration made by Ranjana to the Executive Magistrate PW 6 Ashok Bhor can be believed. We find it unsafe to place reliance on the said written dying declaration also. This dying declaration is said to have been made at about 8 to 8.30 p.m. on 10.8.1999. The medical case papers indicate that at 4.20 p.m. a sedative was administered to Ranjana. Dr. Gavai has admitted in his evidence that the effect of this injection would last for about six hours. We find from the endorsement on Exhibit 22 that at 8 p.m. Dr. Mohan Gavai (PW 8) gave an endorsement to the effect that the patient was conscious to give statement. He thereafter went on his round. He is not a witness to the actual recording of the statement. According to the Special Executive Magistrate Ashok Bhor, after

recording the statement Ranjana put her thumb impression below it. This thumb impression has not been attested. The learned Advocate for the accused has placed reliance on the Division Bench judgment of this Court in State of Maharashtra v. Rambhau Dahibhajan 2005 ALL MR (Cri) 849. In this case, a very faint thumb impression of the deceased was appearing in the margin of the dying declaration. There was no endorsement or attestation by the Executive Magistrate to identify that it was a thumb impression of the victim. In para 26 of the judgment, the Division Bench of this Court observed as under:

Our close scrutiny of the dying declaration - Exhibit 39 goes to show that a very faint thumb impression appears in the margin of the dying declaration. A bare look of the said thumb impression spells out suspicion. In the first place there is no endorsement. Secondly it is not attested. Executive Magistrate in his evidence has admitted that the thumb impression is to be endorsed and attested by a person who takes it. He had stated that he did not feel it necessary to endorse the thumb impression, as he thought that he himself and the doctor were responsible persons and that he recorded the statement in the presence of the doctor. We are not satisfied with the explanation given by the Executive Magistrate. There is nothing on record to show that the victim was unable to make her signature. There is nothing on record to show that as fingers of the victim were burnt, she could not make her signatures. We do not dispute the fact that the Executive Magistrate and the Medical Officer Dr. Sharma are responsible officers. There is no reason to dispute their integrity. But then they have acted in such a casual manner that the authenticity of the dying declaration goes in the realm of suspicions. That is much more so when faint thumb impression has been obtained in the margin of the dying declaration -Exhibit 39 without there being any endorsement or attestation to identify that it was the thumb impression of the victim.

12. It was sought to be argued that since the deceased had suffered 9% burns on her hands she could not have put her thumb impression on her dying declaration. Reliance is placed on the decision of the Apex Court in the case of State of Punjab v. Gian Kaur and Anr. II (1998) CCR 38. We do not find substance in this argument, as, no question has been asked as to whether the skin on the thumbs of deceased were burnt. The case decided by the Apex Court was on different facts where there were 100% burns on both the thumbs. In our opinion, the ratio in this judgment is not applicable to the facts of the present case. The entries made at 3.30 p.m. and 6.30 p.m. in the case papers regarding death being accidental, with the entry at 6.30 p.m. further mentioning that the accident was due to bursting of a stove are other factors that cast shadow of doubt on the contents of the dying declaration said to have been recorded at 8 p.m.

13. As regards the second dying declaration made to PSI Jyoti, same appears to have been made within 15 minutes of the recording of the first dying declaration. The evidence of PW 10 Jyoti indicates that immediately after receiving the dying

declaration recorded by the Executive Magistrate she read the same and immediately proceeded to the hospital and recorded the statement of deceased. PW 10 Jyoti has admitted in her cross-examination that she did not take the permission or opinion of the doctor before recording the statement of the deceased. In our view, there was no reason to record a second written dying declaration within 15 minutes of the first written dying declaration recorded by the Executive Magistrate when it was in her hands and she had admittedly read the same. PW 10 Jyoti appears to have treated the second dying declaration recorded by her as the First Information Report. This was also a mistake because the first dying declaration (Exhibit 22) which was in her hand should have been treated as the First Information Report and the basis for registration of the crime.

14. In view of the aforesaid suspicious circumstances relating to the making of the dying declarations we then tried to find out if the truth of the contents thereof were corroborated in any manner. We failed to find any such corroboration. Avinash has admitted that his mother was getting a salary of about Rs. 1,000 per month. The Investigating Officer has admitted in her evidence that she made inquiries about the money lying in the bank accounts of deceased Ranjana but no such large amount was found to have been withdrawn. Similarly, the Investigation Officer failed to confirm as to whether any motor cycle was purchased by the accused.

15. One more factor that weighs on our mind while allowing this appeal is that a stove with the cap of its kerosene tank fallen was found in the room where Ranjana was burnt. The map indicates that this room was being used as a kitchen. The spot Panchanama, which was carried on the next day morning, indicated that a stove was found on the spot. The cap of its kerosene tank was found to have separated from the body of the stove and was lying nearby. Surprisingly, this stove was not seized by the police. It is rather strange that the cap of the tank of this stove was lying separated from the stove. This circumstance is not explained by the prosecution. The prosecution case is that the stove was not used at all in the commission of the offence and that kerosene was poured on Ranjana from a kerosene can. The stove in question seems to be the only article in the room on which food could have been cooked. No other item like gas burner, electric heater or hearth was found in the room. This unexplained circumstance coupled with the non-seizure of the stove particularly when the condition of the stove could have an important bearing in ruling out an accident is another factor that creates a doubt in our minds.

16. We are thus unable to place reliance either on the oral or written dying declarations in this case. In our view, the prosecution has not proved its case beyond reasonable doubt. Hence, the appeal will have to be allowed.

17. In the result, the appeal is allowed. The impugned judgment and order dated 28.3.2000 in Sessions Case No. 220 of 1999 passed by the learned 3rd Additional Sessions Judge, Ahmednagar, is quashed and set aside. The accused is acquitted of all the charges levelled against him. The bail bond of the accused to

stand cancelled.