

**(2017) 09 BOM CK 0179**  
**In the Bombay High Court**  
**Case No : 27 of 2002**

Hiralal Shalikram Shendre

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 20-09-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused  
[Indian Penal Code, 1860](#), [Section 302](#),  
[Section 307](#), [Section 304](#) Se

**Citation :** (2017) 09 BOM CK 0179

**Hon'ble Judges :** Rohit B. Deo

**Bench :** SINGLE BENCH

**Advocate :** H.G. Katekar, N.B. Jawade

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## Judgement

1. The appellant assails the judgment dated 15.10.2001 delivered by the 3rd Additional Sessions Judge, Nagpur in Sessions Trial 481/1998, by and under which, appellant is convicted of offence punishable under section 304 PartII of I.P.C. and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5000/.
2. Heard Shri H.G. Katekar (appointed), the learned counsel for the accused and Shri N.B. Jawade, the learned Additional Public Prosecutor for the respondent/ State.
3. The prosecution case is that the deceased Sheela who was the wife of the accused and was employed as Sweeper in the Corporation, was set afire by the accused on 25.12.1996. The case of the prosecution is that on 25.12.1996 Sheela returned from her duty in the afternoon and cooked meal. The accused came home around 03:00 p.m. under the influence of liquor, and there was an altercation between the accused and Sheela. The altercation, according to the prosecution, took place as the accused was enraged that Sheela had cooked just Khichdi and Omelet and an incensed accused poured kerosene on the person of

Sheela and set her afire. Sheela rushed out of the house shouting for help, neighbours rushed to her help, Sheela was rushed to the Meyo Hospital and initially acting on Sheela's report an offence under section 307 of I.P.C. came to be registered against the accused. Sheela however, expired while undergoing treatment in the hospital and an offence under section 302 of I.P.C. came to be registered against the accused.

4. The investigation was conducted by PSI Patil of Sadar Police Station and pursuant to filing of chargesheet the case was committed to the Sessions Court. The accused pleaded not guilty and claimed to be tried. The defence as is discernible from the statement recorded under section 313 of Cr.P.C. is of total denial.

5. The prosecution examined as many as eight witnesses including P.W.1 Meherunnisa Habib Khan, P.W.3 Sushila Damodar Das and P.W.6 Mumtaz Khan who are the immediate neighbours of the accused and the deceased and who according to the prosecution were first to reach the spot. The prosecution case is that the deceased disclosed to P.W.1, P.W.3 and P.W.6 that she was set on fire by the accused. However, P.W.1, P.W.3 and P.W.6 have not supported the prosecution and the case of the prosecution rests only on the dying declaration of the deceased.

6. The learned counsel for the accused submits that multiple dying declarations were recorded which are inconsistent with each other on material aspects and in the absence of any corroborative evidence, it would be unsafe to base conviction only on the dying declaration recorded by the Special Judicial Magistrate (P.W.4). The learned counsel would submit that P.W.1, P.W.3 and P.W.6 have not supported the prosecution, they were declared hostile and crossexamined by the A.P.P. and nothing is elicited in the crossexamination to assist the prosecution. Au contraire, in the crossexamination on behalf of the accused, P.W.1 states that the deceased used to consume liquor and behave like an insane person, P.W.3 states that the deceased was addicted to liquor, was mentally ill and was being treated for mental ailment and P.W.6 Mumtaz Khan stated that the deceased was hot tempered and was under the treatment for mental ailment. The learned counsel would submit that P.W.3 Sushilabai as a fact states in the crossexamination on behalf of the accused that she was told by the deceased that while cooking the deceased suffered burns.

7. Shri N.B. Jawade, the learned A.P.P. submits that the dying declaration is confidence inspiring and the learned Sessions Judge did not commit any error in basing the conviction on the dying declaration. The learned A.P.P. would submit that prosecution witnesses P.W.1, P.W.3 and P.W.6 were obviously won over by the accused and their refusal to support the prosecution does not dent the case of the prosecution since the dying declaration is implicitly reliable and confidence inspiring.

8. The dying declaration (Exh.19) was recorded by P.W.4 between 06:20 p.m.

and 06:40 p.m. on 25.12.1996. P.W.4 has deposed that on 25.12.1996 he was requested by Sadar Police Station to record the dying declaration of Sheeladevi wife of Hiralal admitted in Meyo Hospital, Nagpur. P.W.4 states that it is only after the Doctor certified that the patient was in a condition to give the statement, that he recorded the dying declaration in question answer form. P.W.4 deposes that the statement was read over to Sheela and she admitted the same to be true and correct. P.W.4 states that after Sheela signed the statement, again the Doctor was requested to certify that Sheela was conscious during recording of her statement. The Doctor accordingly certified that Sheela was indeed conscious. The Doctor who certified that Sheela was fit to give the statement is examined as P.W.8. He states that he examined the patient and found her to be in a fit condition, mentally, as well as physically, to give the statement and accordingly he issued the certificate. P.W.8 states that he was again called by the Magistrate and was asked to certify about the conscious state of the patient and upon examination of the patient P.W.8 found her to be in a fit condition and issued the certificate (Exh.18). P.W.8 has denied the suggestion that Sheela was under heavy medication. He admits that when Sheela was admitted in burn ward she was in acute pain till she was administered pain killing medicines. P.W.8 denies the suggestion that the patient was not a fit condition either mentally or physically to give the statement. Pertinently, while P.W.4 who recorded the dying declaration was suggested that both the hands of the patient were burnt and the patient was not able to sign, which suggestion is denied, such a suggestion is not given to P.W.8. The postmortem report further does not substantiate the contention of the defence that Sheela could not have signed on the dying declaration in view of the burn injuries to both the hands.

9. The learned counsel for the accused submitted that there are multiple dying declarations on record which are inconsistent. My attention is invited to Exh.25 which is the statement of the deceased recorded by P.W.7 PSI Patil immediately after her admission in the hospital. It is on the basis of the said statement that initially offence under section 307 of I.P.C. was registered. I do not see any material inconsistency in Exh.19 and 25. Both the statements are consistent on every material aspect of the narrative. Both the statements make a reference to the accused loosing tamper and in a fit of rage pouring kerosene on the person of the deceased and setting her afire. Both the statements are consistent on the genesis of the altercation which provoked the intoxicated accused to set the deceased afire.

10. The deceased suffered 57% burn injuries and expired almost one week after the incident. The postmortem report states that no burn injuries were found on the lower limb right, left and perineum. The cause of death is the complication due to the burn injuries leading to pyaemia.

11. The evidence of both P.W.4 who recorded the dying declaration and P.W.8 who examined the patient certified that she was in a fit condition to give the statement, in my opinion, is reliable and trustworthy. The credibility of both P.W.4

and P.W.8 is not shaken in the crossexamination. The dying declaration recorded by the Special Magistrate is consistent with Exh.25. I am not persuaded to hold that the dying declaration Exh.19 is not confidence inspiring.

12. A dying declaration is neither a deposition in Court nor made on oath is tested by crossexamination on behalf of the accused. The admissibility of dying declaration is founded on the principle of necessity. The juristic justification underlying the admissibility of dying declaration under section 32(1) of the Indian Evidence Act is articulated by the Hon"ble Apex Court in Smt. Laxmi v. Om Prakash and others AIR 2001 SC 2383 thus:

"Nemo moriturus praesumitur mentire - No one at the point of death is presumed to lie. " A man will not meet his Maker with a lie in his mouth" - Is the philosophy in law underlying admittance in evidence of dying declaration. "A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration" - Is the statement of law summed up by this Court in Kundula Bala Subrahmanyam v. State of A.P., (1993) 2 SCC 684 : (1993 AIR SCW 1321). The Court added - such a statement, called the dying declaration, is relevant and admissible in evidence provided it has been made by the deceased while in a fit mental condition. The above statement of law, by way of preamble to this judgment, has been necessitated as this appeal, putting in issue acquittal of the accused respondents from a charge under Section 302/34, I.P.C. seeks reversal of the impugned judgment and invites this Court to record a finding of guilty based on the singular evidence of dying declaration made by the victim. The law is well settled; dying declaration is admissible in evidence. The admissibility is founded on principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to crossexamination. If in a given case a particular dying declaration suffers from

any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the Court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the Court, the same may be refused to be accepted as forming safe basis for conviction. In the case at hand, the dying declarations are five. However, it is not the number of dying declarations which will weigh with the Court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand if every individual dying declaration consisting in a plurality is found to be infirm, the Court would not be persuaded to act thereon merely because the dying declaration are more than one and apparently consistent.

13. If the evidence is evaluated on the touchstone of the articulation of the Hon"ble Supreme Court referred to supra, it must be held that the learned Sessions Judge was right in basing the conviction on the dying declaration Exh.19. The judgment impugned does not suffer from any infirmity, in law or on facts.

14. The appeal is without substance and is rejected.

15. The bail bond shall stand cancelled. The accused be taken into custody forthwith to serve the sentence.

16. The fees of the learned Advocate appointed for the appellant is quantified at Rs.5,000/.