

(2017) 10 BOM CK 0059
In the Bombay High Court
Case No : 215 of 2001

Rukhmanbai W/o. Waman Bhogade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 437A](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[S](#)

Citation : (2017) 10 BOM CK 0059

Hon'ble Judges : T.V.Nalawade, S.M. Gavhane

Bench : DIVISON BENCH

Advocate : N.T.Tribhuwan, R.V.Dasalkar

Final Decision : Allowed

Judgement

1. Appellant-original accused No.1 mother-in-law of the deceased Dropadabai who is convicted and sentenced to suffer imprisonment for life and to pay fine of Rs. 1000/, in default, to suffer simple imprisonment for one year for the offence punishable under Section 302 of the Indian Penal Code (for short the IPC) and further convicted and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.200/, in default to suffer simple imprisonment for two months for the offence punishable under Section 498A of the IPC and the said substantive sentences were directed to run concurrently, by the judgment and order dated 09.05.2001, in Sessions Case No.111/1997, passed by the Additional Sessions Judge, Aurangabad, has challenged the said conviction and sentence.

2. Facts of the prosecution case, are as under: A] Mahadu Pansare (PW4) is the father of the deceased. Deceased was married to accused No.3 three years prior to the incident. Accused No.2 is sisterinlaw of the deceased. PW4 and all accused are residents" of Bidkin, Tq. Paithan, Dist. Aurangabad. After marriage of the deceased everything was happy for about three years.

B] While the deceased was cohabiting with her husband accused No.3 at her inlaws house on 25.08.1996 at 09.00 am she sustained 85% burns. She herself extinguished the fire with water. The neighborers came to the spot of incident. They had called accused No.3. He and three others admitted deceased Dropadabai in injured condition in Sumananjali Hospital, Khadkeshwar, Aurangabad at about 11.00 am. On the same day, in the night Medical Officer Dr. Vinod Dhamande informed the same to the Police Inspector of City Chowk Police Station, Aurangabad. Thereupon, entry to that effect was taken in the station diary regarding Medico Legal Case and the HeadConstable Joshi was given the investigation of the same. Treatment was started on the injured in the aforesaid hospital.

C] On 26.08.1996 while the deceased was being treated in Sumananjali Hospital, Aurangabad the Police HeadConstable of City Chowk Police Station, Aurangabad requested the Special Executive Magistrate to record the statement of Dropadabai. Accordingly the Special Executive Magistrate Bombale (PW5) went to Sumananjali Hospital and recorded dying declaration (Exh.28) of the deceased on 26.08.1996 between 12.40 to 01.05 pm, after she was examined by Dr. Sanjay Patne (PW6) and after he made endorsement on letter (Exh.33) addressed to the Medical Officer, Sumananjali Hospital that patient is fit to give statement, alleging that on 25.08.1996 at about 09.00 am she was inserting the string of her petticoat. She had quarreled with her motherinlaw since 2-3 days. Her motherinlaw/ accused No.1 abused her saying that her parents have cheated her and her son i.e. accused No.3 and that her character is not good. On saying so, her motherinlaw assaulted her and poured kerosene in the can on her person and set her on fire by lighting the matchstick. They both were in the house. Thereafter, she came running outside the house and extinguished the fire with water in the bucket on pouring the water on her person. Meanwhile, neighborers Kadubai, Reubai Narayan Bogade and Kachru Bogade came there. At that time her husband accused No.3 had gone on the cart. Somebody had called him. He, Bhausaheb Thote and Kailas Jadhav admitted her in the Sumananjali Hospital, Aurangabad.

D] Thereafter, on the same day i.e. on 26.08.1996 while the deceased was in Sumananjali Hospital the HeadConstable Joshi (PW2) recorded statement/dying declaration (Exh.20) of the deceased at about 06.00 pm after ascertaining about health of the deceased from the Medical Officer (PW6) in the said hospital, stating that she was married to accused No.3 four years prior to the incident. She has no issue. She resides with all the accused. After the marriage she was treated properly for 5-6 months by her motherinlaw. Thereafter as she has no issue and for bringing Rs.5000/from her parental house for purchasing the jeep her motherinlaw, sisterinlaw and the husband frequently started harassing, abusing and beating her. She narrated the same to her father Madhav Pansare (PW4) 2 to 3 times and he convinced her and people from her inlaws house but people from her inlaws house did not listen and again continued to harass her. It was alleged that on 25.09.1996 at about 09.00 hours there was quarrel between

her and motherinlaw on the ground that she used string of petticoat of motherinlaw to her petticoat, on the ground of dowry amount, that she had no issue and her motherinlaw on abusing and beating her, while she was in the house poured kerosene on her person and set her on fire by putting burning paper on her person. Therefore, she sustained injuries to both the hands, stomach and back.

E] Dying declaration (Exh.20) recorded by HC Joshi (PW2) was sent to Police Station Bidkin and on the basis of the same Crime No.75/1996 was registered against accused for the offences punishable under Sections 498A, 307 r/w Section 34 of the IPC and PSI Mhaisekar (PW7) started investigation. In the night of 26.08.1996 the deceased was transferred for further management to the Government Medical College and Hospital, Aurangabad at 08.00 pm. She succumbed to burn injuries on 31.08.1996 at 17.35 hours. PSI Mhaisekar prepared inquest panchanama (Exh.35). Dr. Bhalchandra (PW1) conducted postmortem examination on the dead body. He opined that death was caused on account of 85% burns due to septicemic shock alongwith injuries found on the right parietal region and issued postmortem report (Exh.17). PSI Mhaisekar recorded the statements of witnesses including statement of PW4 father of the deceased to whom the deceased made oral dying declaration about involvement of all accused in the commission of offence. Panchanama (Exh.23) of spot of incident was prepared.

F] After completion of the investigation PSI Mhaisekar submitted the chargesheet in the Court of JMFC, Paithan, who then committed the case to the Sessions Court, Aurangabad, which was then allotted to Additional Sessions Judge, Aurangabad for trial.

G] The charge was framed against all the three accused for the offence punishable under Section 498A r/w Section 34 of the IPC and against accused No.1 for the offence under Section 302 of the IPC. Accused pleaded not guilty to the charge. Accused No.1 in her statement under Section 313 of the Code of Criminal Procedure stated that deceased was mentally affected. Deceased started stove. Deceased caught fire due to stove. She poured water on deceased and extinguished the fire. Deceased had given false statement. Deceased was taken to Jamkhed to cure her mental illness. No witness in defence is examined by the accused.

H] In all seven witnesses were examined by the prosecution and it has relied on written dying declarations (Exh.20 and 28) and oral dying declaration made to PW4 her father by the deceased. Considering the evidence of the prosecution the trial Court has convicted and sentenced accused No.1 for the offences under Sections 498A and 302 of the IPC as mentioned in the introductory para (supra) and acquitted accused Nos. 2 and 3 of the offence under Section 498A of the IPC by the impugned judgment. Therefore, this appeal by accused No.1 challenging the conviction and sentence recorded against her.

3. Learned counsel appearing for the appellant submits that there is no consistency in the written dying declarations (Exh.20 & 28) and oral dying declaration made by the deceased to her father (PW4) and therefore, impugned conviction and sentence recorded against the appellant is liable to be set aside by allowing the appeal and prayed to acquit the appellant/accused No.1 of the offences for which she has been convicted.

4. Learned APP appearing for the respondent/State submits that the trial Court has rightly convicted and sentenced the appellant/accused No.1 and claimed to dismiss the appeal.

5. We have carefully considered the submissions of learned Advocate appearing for the appellant/accused No.1 and the learned APP and with their able assistance we have perused the evidence adduced by the prosecution and impugned judgment and order.

6. There is no dispute that deceased was married to accused No.3 four years prior to the incident on 25.08.1996. After marriage she went to the house of the accused for cohabitation. While deceased was at the house of accused she sustained 85% burns on 25.08.1996 at about 09.00 to 10.00 am and she died due to burns on 31.08.1996 while under going treatment in the Government Medical College and Hospital, Aurangabad at 17.35 hours.

7. Considering the fact that death of the deceased was caused due to burns, the defence of accused No.1 that the deceased started stove at the material time of incident and caught fire and the allegations of the prosecution against accused No.1 that she poured kerosene on the deceased and set her on fire, it is necessary to see whether death of the deceased is accidental or homicidal and that accused No.1 is responsible to her death. To prove these facts prosecution has relied upon the evidence of following categories.

i. Written dying declarations(Exh.28& 20)

ii. Oral dying declaration made by the deceased to her father (PW4) and his evidence regarding cruelty to deceased.

iii. Motive to accused No.1 to commit murder of the deceased.

8. Since the prosecution has relied upon multiple dying declarations referred to above at the out set it is necessary to refer law laid down by the Hon"ble Supreme Court and this Court in the following decisions on appreciation of dying declaration:

a. In the case of Jand Another Vs State of Maharashtra (2013) 2 Supreme Court Cases 224, it was held that in case of multiple dying declarations, they can be believed and each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected solely because of certain variations in another declaration.

b. In the case of Anwar Shah Babu Shah Fair and others Vs The State of

Maharashtra 2012 ALL MR (Cri) Bombay High Court 2774, it was held that in case of more dying declarations, each dying declaration needs to be considered separately and it becomes duty of the Court to find out, whether the other evidence is consistent with the dying declarations. If the other evidence is consistent with one dying declaration, that dying declaration can be safely accepted and relied upon and other dying declaration can be discarded.

c. In the case of *Sudhakar Vs State of Madhya Pradesh* (2012) 7 Supreme Court Cases 569, it was held that where multiple dying declarations made by the deceased are either contradictory or at variance with each other to a large extent, test of common prudence would be to first examine which dying declaration is corroborated by other prosecution evidence. Moreover, attendant circumstances, condition of deceased at the time of making of each statement concerned, medical evidence, voluntariness and genuineness of Statement made by deceased, physical and mental fitness of deceased and possibility of deceased being tutored are some of the factors which would guide exercise of judicial discretion by Court in such matters.

d. In the case of *Rajkumar Shivnath Yadav Vs Union Territory of Daman & Diu* and another 2016 ALL MR (Cri) Bombay High Court 392, it was held that endorsement of doctor on dying declaration is not sine qua non or must. Essential requirement is satisfaction of person recording it that deceased was in fit condition to give statement. It is not necessary that dying declaration should be recorded in question and answer form only.

e. In the case of *Sk. Biban @ Chunnu S/o. Shaikh Nizam Vs State of Maharashtra* 2010 ALL MR (Cri) Bombay High Court (Aurangabad Bench) 779, it was held that merely stating that the dying declaration was recorded as per the narration of the injured would not amount to proving the contents of the dying declaration.

9. Keeping in mind the above principles regarding appreciation of evidence of dying declaration we shall proceed to consider whether the dying declarations (Exh. 28 & 20) and oral dying declaration to PW4 by the deceased are truthful, voluntary and free from any tutoring and that they are reliable. . Dying declaration (Exh.28) was recorded by Special Executive Magistrate Bombale (PW5) on 26.08.1996 between 12.40 pm to 01.05 pm in Sumananjali Hospital, Aurangabad while deceased was admitted in the said hospital in injured condition. The evidence of PW5 is that on the said date he received the letter from City Chowk Police Station to record the statement of deceased. He visited Sumananjali Hospital. He enquired with Medical Officer who was attending health of patient. He gave letter to Doctor to certify about the conscious state of the burn victim. Doctor examined the patient and certified about her conscious mental condition. He stated that he visited the patient. He removed her relatives. He made enquiry of preliminary nature of the victim and ascertained about her mental condition. After recording her name and her address, he enquired about the incident to which she stated that on 25.08.1996 while she was sitting in the home accused No.1 was cursing her saying that she is a woman of shadow

character and there was quarrel in which accused No.1 poured kerosene on her person and set her to fire. He stated that he recorded whole statement (Exh.28) which bears his signature. He obtained thumb impression of victim. The statement is as per narration of the victim.

10. In the cross-examination PW5 stated that victim sustained burn injuries on 26.08.1996. He deposed that he does not know the name of doctor who endorsed about health of the victim. The endorsement was obtained at 12.40 noon. He stated that he had not obtained any separate certificate about condition of victim. There is no name of doctor below the endorsement. He stated that he does not know that the persons who were nearby the victim, were either relatives or otherwise. He stated that he could not tell if victim was alone or in a common ward. He stated that except he and patient none else was present.

11. As per the prosecution case PW5 recorded dying declaration (Exh.28) and Dr. Sanjay Patne (PW6) made endorsement regarding condition of the deceased on letter (Exh.27) at 12.40 pm on 26.08.1996 that the patient is fit for to give statement. But as referred above PW5 could not tell name of doctor who made endorsement about condition of the patient after examining the patient. Similarly Dr. Patne (PW6) has stated that he made endorsement on letter (Exh.27) about the condition of the patient. He has not stated that before making endorsement on letter (Exh.27) that the patient is fit for to give statement, he examined patient. In fact, he should have stated in that respect because admittedly on earlier day i.e. 25.08.1996 after sustaining burn injuries the patient/deceased was unconscious and prosecution claims that the dying declaration (Exh.28) was recorded by PW5 on 26.08.1996. So also, Dr. Patne has stated that patient was managed by Dr.Dhamande and Dr. Deshpande who were Surgeons in the hospital and that he had not attended the said patient at any point of time except at the time of making endorsement. So also, he does not claim that he was present through out when the dying declaration (Exh. 28) was recorded. In the above circumstances when PW5 has not stated about nature of questions put by him to the patient in enquiry of preliminary nature to ascertain mental condition of the patient and claimed that Dr. Patne was present through out recording dying declaration (Exh.28) who in fact, does not say so and when patient sustained 85% burn injuries it is doubtful whether the patient was fit to make statement through out recording dying declaration (Exh.28).

12. The detailed dying declaration (Exh.28) is as mentioned in para2C (Supra). The Special Executive Magistrate (PW5) has as referred earlier stated that only the deceased stated that on 25.08.1996 while she was sitting in the home accused No.1 was cursing her saying that she is a woman of shadow character and there was quarrel in which accused No.1 poured kerosene on her person and set her on fire. Thus, he has not stated about the entire contents of dying declaration (Exh.28) about assaulting deceased by accused No.1 and that she came running out side the house and extinguished the fire with water and that Bhausaheb and Kailas admitted her in Sumananjali Hospital, Aurangabad. The

prosecution has thus not proved all the contents of dying declaration (Exh.28) and truth thereof. Moreover, PW5 has simply stated that this dying declaration bears his signature and he had obtained thumb impression of the victim and that said statement is as per narration of the victim. He has not stated that he read over the contents of dying declaration (Exh.28) to the deceased and on her admitting that said contents are as per her say, her thumb impression was obtained on the same. On perusal of dying declaration (Exh.28) there is an endorsement on the same that statement was read over to the deceased and that the said statement is as per her say. But, when PW5 has not stated in this respect it cannot be said that dying declaration (Exh.28) is as per the say of the deceased.

13. As regards dying declaration (Exh.20) recorded by the HeadConstable Joshi (PW2) the detailed dying declaration is as referred in para2D (Supra). Head Constable Joshi has stated that on 26.08.1996 he was attached to the Police Station Bidkin. He was entrusted with enquiry in respect of MLC case of burns caused to the deceased who was admitted in Sumananjali Hospital. He deposed that he recorded statement of the deceased after ascertaining her health from attending Medical Officer. The Medical Officer, examined patient and gave certificate on his (witness's) letter (Exh.19) that patient is fit to give statement. HeadConstable Joshi further stated that he recorded statement of the deceased and she gave statement that her motherinlaw had poured kerosene and set her on fire. He reduced her statement into writing. He obtained her thumb impression. He put his signature and the said statement is Exh.20. He stated that he returned to Bidkin Police Station and registered the offence on the basis of said complaint/statement. According to him the deceased complained that she was being harassed on account of demand of money and on the day of incident she was cursed because of her barrenness and demand and on that count accused No.1 had poured kerosene and set her on fire. The patient was capable to understand him and he was also able to understand what patient was understanding.

14. In the crossexamination HC Joshi (PW2) has stated that he does not know the name and designation of the Medical Officer who made endorsement on his letter (Exh.19). He had not sought certificate on the letterhead of the Hospital. He deposed that it was about 06.00 pm on 26.08.1996. He had not recorded statement in question and answer form. He went on recording what she had replied and only recorded her reply. He denied that the deceased was not in a conscious state and he drafted her statement on the say of her father. Thus, it is clear from the evidence of PW2 that he recorded dying declaration (Exh.20) of the deceased on 26.08.1996 at 06.00 pm. He could not tell the name of Medical Officer who made endorsement on his letter about the condition of the patient. So also, he had not stated that he ascertained the condition of the deceased by putting certain questions. In fact, he should have stated that he satisfied himself by asking some questions to the patient, to ascertain that she was in a position to make statement. As referred earlier on 25.08.1996 when the deceased

sustained burns she was not conscious. Moreover, PW2 has stated that he had not seen any record who admitted the deceased and he had not verified case papers of the patient. In such circumstances his evidence that the patient was capable to understand him and that the patient/deceased was in a position to make statement at 06.00 pm on 28.06.1996 is not believable.

15. As referred earlier PW2 has stated that the deceased stated before him that she was being harassed on account of demand of money, and on that day she was cursed because of her barrenness and demand and on that count accused No.1 had poured kerosene on her person and set her on fire. As such he has stated only about part of contents of dying declaration (Exh.20) recorded by him and he has not stated about the remaining contents of the dying declaration that the deceased stated before him that she was treated properly for 4 to 6 months by her motherinlaw. Thereafter, as she has no issue and for bringing Rs.5000/- from her parental house for purchasing the jeep her motherinlaw, sisterinlaw and her husband frequently started abusing, harassing and beating her. That she narrated the same to her father 2-3 times and her father convinced her and people from her inlaws house, but they did not listen and again continued to harass her and that on the day of incident there was quarrel between her and her motherinlaw as she used string of petticoat of her motherinlaw and on the ground of dowry and that she had no issue as detailed in paragraph No.2D (supra). Therefore, it cannot be said that the prosecution has proved all the contents and truth of all the contents of dying declaration (Exh.20) recorded by PW2. Moreover, PW2 has not stated that he read over the dying declaration to the deceased and on her admitting that the contents of the said dying declaration are as per her say her thumb impression was obtained on the dying declaration. He has simply stated that he obtained thumb impression of the deceased on dying declaration (Exh.20). In such circumstances it cannot be said that dying declaration (Exh.20) was recorded as per say of the deceased.

16. Now coming to the oral dying declaration allegedly made by the deceased to her father (PW4) and his evidence regarding cruelty to the deceased, PW4 has stated that after marriage of the deceased for three years everything was alright. Then accused No.1 started making grievance about behavior of the deceased and she started demanding money for purchasing jeep. He further deposed that whenever the deceased used to come, she used to make grievance against her motherinlaw. She made demand of Rs.5000/-. She took him to the house of accused No.1 and he told accused No.1 that he does not have money and then he returned. Thereafter deceased was illtreated. In the crossexamination he could not tell why it is not mentioned in his statement before police that accused No.1 called him to her house and demanded Rs. 5000/-.

17. As regards oral dying declaration, PW4 father of the deceased has stated that he was informed by his nephew Krishna about the incident. He visited the deceased in the private hospital. Accused No.3 admitted the deceased in Sumananjali Hospital. He stated that on that day he could not talk with the

deceased. On the next day deceased told him that accused Nos.1 to 3 set her on fire by pouring kerosene. In the crossexamination he admitted that he did not talk to deceased because she was unconscious on 25.08.1996. He has denied that deceased did not tell him that accused Nos.1 to 3 had poured kerosene on her person and set her on fire. So also, he denied that death of the deceased was caused on account of flickering of the stove. Considering the evidence of PW4 that on the day of incident on 25.08.1996 when he visited the deceased in Sumananjali Hospital he could not talk with the deceased and that she was unconscious, his evidence that on the next day deceased disclosed him that all accused Nos. 1 to 3 poured kerosene on her person and set her on fire is not believable as he has not specifically stated at what time on 26.08.1996 deceased disclosed as above to him and that at the relevant time deceased was conscious. The evidence of Dr. Patne (PW6) does not show that on 26.08.1996 through out day the deceased was conscious or in a position to make statement. Therefore, it cannot be said that at a particular time on 26.08.1996 the deceased had told her father that all the accused poured kerosene on her person and set her on fire.

18. On considering the dying declarations (Exh.28 & 20) and the evidence of PW4 father of the deceased regarding oral dying declaration to him by the deceased it is clear that in the written dying declarations allegations are made that accused No.1 motherinlaw of the deceased poured kerosene on person of the deceased and she threw burning paper on person of the deceased as per Exh.20 and as per Exh.28 she set the deceased on fire by lighting matchstick. Therefore, there is no consistency in these dying declarations about the mode of setting the deceased on fire. Moreover, as per oral dying declaration to her father by the deceased all the accused Nos.1 to 3 poured kerosene on the person of the deceased and set her on fire. This oral dying declaration is contrary to the contents of dying declarations (Exh.20 & 28) as in the said dying declarations as referred above allegation in this respect is made only against accused No.1. Moreover, in dying declaration (Exh.20) it is stated that after marriage, for 5-6 months accused No.1 treated the deceased properly and thereafter all the accused started harassing and beating the deceased frequently as she had no issue and saying her to bring Rs.5000/for purchasing the jeep. Whereas in dying declaration (Exh.28) no allegations are made that all the accused harassed and beaten the deceased for demand of Rs.5000/for purchasing jeep. So also, as noted earlier PW4 father of the deceased stated that accused No.1 demanded money for purchasing jeep and in the crossexamination he stated that said demand was made after three months after purchase of the jeep. Thus, there is no consistency in the aforesaid two dying declarations and oral dying declaration made to PW4 father of the deceased about the cruelty as well as about incident of causing burn injuries to the deceased. Therefore, for the above reasons we hold that prosecution has failed to prove that dying declarations (Exh.20 & 28) and oral dying declaration made to PW4 father of the deceased by the deceased are trustworthy and believable. Naturally, therefore, it cannot be said that accused No.1 caused cruelty to the deceased for fulfilling demand of Rs. 5000/for

purchasing the jeep as alleged by the prosecution.

19. It has come in the evidence of PSI Mhaisekar (PW7) that on 26.08.1996 he recorded the statement of Dropadabai the deceased by visiting the hospital. In the cross-examination he stated that he does not remember where he had recorded the statement of the deceased and that he did not find it necessary to have endorsement about physical fitness of the patient. Thus, it appears that PW7 recorded the statement of the deceased. Admittedly said statement is not produced on record. In fact, said statement would have thrown light on the aspect as to how the deceased sustained burns i.e. either she was set on fire by accused No.1 or that she sustained burns accidentally. Suppressing said statement of the deceased by the prosecution creates doubt about involvement of the accused in committing alleged offences.

20. It has further come in the evidence of PW7 that he made enquiry with the adjoining house holders of the deceased in respect of the incident and recorded their statements. It is also seen from the dying declaration (Exh.28) that neighbors namely Kadubai, Reubai Narayan Bogade and Kachru Bogade had come to the house of the deceased and Bhausaheb Thote and Kailas Jadhav had admitted deceased in Sumananjali Hospital. When the above persons had come to the spot of incident, immediately after the incident deceased had an opportunity to disclose about the incident to them. But, admittedly none of the above witnesses have been examined by the prosecution. In the above circumstances dying declaration (Exh.28 & 20) and oral dying declaration to PW4 are not believable and sufficient to infer that accused No.1 caused cruelty to the deceased and caused burn injuries to her by setting her on fire by burning paper after pouring kerosene as alleged.

21. Panchanama (Exh.23) of spot of incident which was prepared by PSIMhaisekar (PW7) in presence of Panch Uttam Bhagaji Dharme and Asaram Ahelaji Dane (PW3) shows that said panchanama was in respect of house of accused. At the time of said panchanama there was a stove and pin. The evidence of PW3 shows that said stove was in burnt condition as if it was effected due to blast. There was vessel for making tea. The police seized said articles and prepared panchanama. PSI Mhaisekar (PW7) has also stated that he prepared panchanama of spot of incident (Exh.23) and articles which were attached were sent to the Chemical Analyzer to find out the contents of kerosene and he received Chemical Analyzer's report. Said report (Exh.36) shows that on the seized partially burnt saree, petticoat and blouse kerosene was detected. But the finding of kerosene on the said articles alone is not sufficient to state that kerosene was poured on the person of the deceased by accused No.1 as alleged by the prosecution particularly when as noted above it has come in the evidence of Asaram DanePanch (PW3) that stove in burnt condition as if it was effected due to blast was found. Because in case of blasting of stove accidentally also there is possibility of finding of kerosene on the clothes on the person of the deceased. Therefore, considering above evidence, the defence of the accused

No.1 that the deceased caught fire due to stove, the possibility of deceased sustaining burns due to blast of stove accidentally when she started stove cannot be ruled out. We, therefore, hold that the prosecution has failed to prove that the death of the deceased was homicidal and that accused No.1 is responsible for causing burn injuries to her and to her death as alleged. The trial Court has not properly considered the said aspect. As such findings recorded by the trial Court on the basis of written dying declarations (Exh.28 & 20) that burn injuries sustained to the deceased were homicidal, that said injuries were caused by accused No.1 by pouring kerosene on her person and setting her on fire are not correct.

22. As discussed above dying declarations (Exh.28 & 20) and oral dying declaration to PW4 father of the deceased are not trustworthy as they are not consistent. It is observed that the prosecution has failed to prove that accused No.1 had caused cruelty to the deceased for unlawful demand of Rs.5000/for purchasing jeep. In such circumstances finding of the trial Court that the prosecution has proved offence under Section 498A of the IPC against accused No.1 is not correct because there is also no consistency in the dying declarations in respect of allegations of cruelty against accused No.1 as observed earlier. So also, prior to the incident in question there was no complaint made either by the deceased or her father to the police that accused No.1 or all the accused were demanding money for purchasing jeep. So also, as noted earlier in the crossexamination PW4 has stated that demand of money for purchasing jeep was made after purchasing jeep. Therefore, it cannot be said that there was demand of Rs.5000/by accused No.1 for purchasing jeep. Therefore, prosecution has failed to prove offence under Section 498A of the IPC against accused No.1 and finding of the trial Court that prosecution has proved said offence against accused No.1 is not correct.

23. As regards motive of accused No.1 to commit murder of the deceased is concerned, it is alleged that accused No.1 was demanding an amount of Rs.5000/ from the deceased and that the deceased had no issue. For the reasons discussed above, the evidence adduced by the prosecution is not sufficient to state that accused No.1 caused cruelty to the deceased on the above said grounds. Therefore, it cannot be said that accused No.1 had motive to commit murder of the deceased.

24. For the reasons discussed above, we hold that the prosecution has failed to prove the offences under Sections 498A and 302 of the IPC against accused No.1 beyond reasonable doubt. Therefore, impugned judgment and order of convicting and sentencing accused No.1 for the aforesaid offences is not sustainable and the same is liable to be set aside and appellant accused No.1 who is on bail is entitled to be acquitted of the said offences by allowing the appeal. Therefore, in the result following order is passed.

ORDER

I] The appeal is allowed.

II] The impugned judgment and order dated 09.05.2001, in Sessions Case No.111/1997, passed by the Additional Sessions Judge, Aurangabad convicting and sentencing the appellantaccused No.1Rukhmanbai W/o. Waman Bhogade for the offences punishable under Sections 302 and 498A of the IPC is quashed and set aside and she is acquitted of the said offences.

III] The fine amount, if any, deposited by the appellantaccused No.1 shall be refunded to her.

IV] Her bail bond stands canceled.

V] Appellant-Accused No.1 shall furnish personal bond in the sum of Rs.5000/ with surety in like amount under Section 437A of the Code of Criminal Procedure before the trial Court forthwith.