
(2013) 08 BOM CK 0141
In the Bombay High Court
Case No : Criminal Appeal No. 1123 of 2006

Samir Balasaheb Awati

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 498A

Citation : (2013) 5 ABR 966

Hon'ble Judges : Revati Mohite Dere, J; P.V. Hardas, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; V.B. Konde-Deshmukh, Assistant Public Prosecutor, for the Respondent

Judgement

Revati Mohite Dere, J.—The Appellant stands convicted for the offence punishable u/s 302 of the Indian Penal Code ("IPC") and sentenced to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for fifteen days, by the Additional Sessions Judge, Ichalkaranji, by the Judgment and Order dated 25th September, 2006, in Sessions Case No. 38 of 2005. By this Appeal, the Appellant questions the correctness of his conviction and sentence. The facts in brief as are necessary for deciding the appeal can briefly be stated as under:

PW. 13-Desai was attached to Shivaji Nagar Police Station, Ichalkaranji as an ASI. He has stated that on 13th July, 2005, a letter was received at the Police Station from IGM Hospital, to record the statement of Salama, who was admitted at the said Hospital. Accordingly, PW. 13-Desai was directed by PSI Nalawade to proceed to the IGM Hospital, for recording the statement of Salama. He has stated, that he reached IGM Hospital at about 9.00 a.m., went to the Casualty Ward, met Dr. Todkar-PW. 9; asked him about the whereabouts of Salama and informed him that he had come to record her statement. Accordingly, Dr. Todkar took PW. 13-Desai to the Burns Ward on the first floor of the Hospital. He has stated, that Dr. Todkar examined Salama and accordingly, made his endorsement

on the paper on which he was going to record the statement of Salama. After recording the statement, he read over the said statement to Salama, who put her signature below the said statement. He has further stated, that, he also put his signature on the said statement as having been recorded before him and that Dr. Todkar also signed on the said statement, which is exhibited vide Exhibit-28. PW. 13-Desai has identified Dr. Todkar's, Salama's and his own signature.

PW. 13-Desai after recording the said statement at Exhibit-28, proceeded to the Shivaji Nagar Police Station and handed over the said statement to the PSO, Shivaji Nagar Police Station, on the basis of which PSO Nalawade registered C.R. No. 79 of 2005 with the Shivaji Nagar Police Station, Ichalkaranji, as against the Appellant, for the offence punishable u/s 307 and 498-A of the Indian Penal Code.

PW. 13-Desai has stated, that on 22nd July, 2005, he received a letter from the IGM Hospital informing them about the death of Salama. Accordingly, he went to the IGM Hospital, drew the Inquest Panchanama which is at Exhibit-15. Thereafter, PW. 13-Desai handed over investigation of the said case to PW. 14-API, Devarshi.

PW. 14-Devarshi, who was working as an Assistant Police Inspector, Shivaji Nagar Police Station, Ichalkaranji, took over the investigation of C.R. No. 79 of 2005 from PW. 13-Desai on 13th July, 2005. He has stated that on the same day, he proceeded to the spot of the incident and prepared the Spot Panchanama, which is at Exhibit-18. He thereafter, recorded the statements of 13 witnesses. He arrested the Appellant on 13th July, 2005 at about 3.30 p.m. and accordingly prepared an arrest panchanama which is at Exhibit-13. The clothes on the person of the Appellant were seized during his arrest.

On 15th July, 2005, on the request of the relatives of Salama, that her statement should be recorded by a Magistrate, PW. 14-Devarshi sent a letter to the Magistrate requisitioning his services. The said letter is at Exhibit-42. On 15th July, 2005, PW. 14-Devarshi recorded the statement of seven witnesses.

On 16th August, 2005, PW. 14-Devarshi sent the seized muddemal to the Chemical Analyser through Police Constable Prakash Dhavlikar (PW. 15) along with the forwarding letter. The said letter is at Exhibit-43. He thereafter handed over further investigation of the said case, to PSI Shri Bolaikar, who filed the charge-sheet in the Court of the Judicial Magistrate, First Class, against the Appellant. He has identified the signature of Shri Bolaikar.

2. On committal of the case to the Court of Sessions, the Trial Court framed charges vide Exhibit-3 as against the Appellant for the offences punishable under Sections 302, 498-A of the Indian Penal Code. The Appellant pleaded not guilty and claimed to be tried.

3. The defence of the Appellant was, that deceased Salama committed suicide. The Appellant filed his written statement, stating therein, that on the day of the incident only he and Salama were present in the house and as he had sexual

intercourse against her will, she committed suicide.

4. The prosecution in support of its case examined 14 witnesses. The Trial Court after considering the evidence on record adduced by the prosecution convicted the Appellant for the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for fifteen days.

5. In order to effectively deal with the submissions canvassed by the learned counsel for the Appellant, Mr. Arfan Sait and the learned APP, Mr. Konde-Deshmukh, it would be useful to refer to the evidence of the prosecution witnesses.

6. PW. 3-Mohan Gagare, has stated that he knew the Appellant and his wife-Salama as they were staying in that vicinity. He has stated that on the day of the incident i.e. on 13th July, 2005, when he was sleeping in his house, at about 4.00 a.m., he heard some shouts/cries from outside the house. He has stated, that when he went out, he saw that Salama was on fire and was shouting "save me, save me". He has alleged, that Salama stated that she was set on fire by her husband. PW. 3-Mohan in his evidence has stated that the Appellant extinguished the fire by throwing water on Salama and that the said incident was witnessed by him and several others on the road. PW. 3-Mohan in his cross-examination has given details about the distance of his house from the place from where the incident took place. He has stated, that at the time when he was at his residence, he heard shouts/cries for about 10 minutes and that except himself no other family members from his family woke up with the cries. He has further admitted in his cross examination, that nearly 25-30 persons had gathered on the said spot and he saw Salama for the first time from a distance of about 150 ft. He has admitted that the persons who had gathered there were also shouting "Wachva Wachva, vizwa, vizwa" and that the Appellant was extinguishing the fire when he witnessed the incident. After extinguishing the fire, Salama was lying on the road. He has admitted that when he went there for the first time, the Appellant was extinguishing the fire and after the fire was extinguished, he returned to his house. It was suggested to the said witness that he had not witnessed the incident and that no disclosure was made by Salama, however he denied the same.

7. PW. 6-Ratan Awati, maternal grand father of Salama has stated that he had settled the marriage of Salama with the Appellant. He has further stated that after marriage, Salama went to cohabit with the Appellant and that for the first 4-5 months she was treated well by the Appellant. He has further stated, that prior to the said incident, Salama had disclosed to him on 2 or 3 occasions, that the Appellant had demanded an amount of Rs. 10,000/- from her, for purchase of a Motorcycle.

8. PW. 6-Ratan has further stated that on 13th July, 2005 at about 6.00 a.m., when he had gone to the Masjid to offer prayers, he learnt that Salama had

sustained burn injuries and therefore he went to the house of the Appellant. He has stated that Salama was lying on the road in front of the house. He has stated, that when he asked Salama as to what had happened, she disclosed that she was pushed by the Appellant outside the house after pouring kerosene. PW. 6-Ratan had stated that he returned to his house and informed the parents of Salama about the said incident on telephone. He has further stated, that it was the Appellant who admitted Salama to the IGM hospital. In his cross-examination, PW. 6-Ratan has stated, that after Salama's marriage when he had enquired with her about her marital life, she had informed him that everything was fine and that except the demand of Rs. 10,000/-, Salama had not complained of anything to him. He has admitted in his cross-examination that he cannot tell the date and time when Salama informed him about the demand of money when she came for festivals. PW. 6-Ratan has admitted, that on one occasion he along with the parents of Salama had gone to the house of the Appellant, asking him to take Salama back to his house, however the Appellant did not allow them to enter, as his parents were not present. It is elicited in the cross-examination, that at that time Salama's parents and he himself had reprimanded her and accordingly a meeting was held between the family members of the Appellant and family members of Salama. He has further admitted that in the meeting, one document came to be executed on a stamp paper in favour of the Appellant. In the said document it was stated, that Salama would not run away and would cohabit properly. He has admitted to the execution of the stamp paper and has identified the signature of Salama, her father and others. The said stamp paper is at Exhibit-33. It was sought to be suggested to the said witness that Salama had tried to run away from the house of the Appellant, two months after her marriage as she did not want to stay with the Appellant, but the same has been denied by him. There was an omission elicited in the cross-examination of this witness with regard to the fact, that Salama had disclosed to him on two or three occasions with regard to the fact that the Appellant was demanding money from her. PW. 6-Ratan has in his cross-examination stated, that after meeting Salama at 4.30 a.m. i.e. after she had sustained burns, he went to the Masjid to offer prayers, and then returned again at about 6.30 a.m. and that when he saw Salama, the fire had been extinguished. He has further stated that after offering prayers at the Masjid, he went back to his house and informed his son about the incident and when he returned to the spot he saw that Salama had been moved to the hospital. He has admitted that when he reached the hospital at 6.30 to 7.00 a.m., the family members of Salama were present in the hospital. He has admitted that he was with Salama all along, however, has denied the suggestion that Salama was tutored.

9. PW. 10-Manjur Awati, the father of deceased Salama, has been examined by the prosecution, with regard to an alleged demand of Rs. 10,000/- by the Appellant, for purchase of a vehicle. He has stated, that Salama used to inform him on telephone, that the Appellant was demanding Rs. 10,000/- for purchase

of a vehicle. He has stated, that on 13th July, 2005, his father in law, PW. 6-Ratan informed him, that Salama had sustained burn injuries and was admitted in the hospital. Accordingly, PW. 10-Manjur alongwith his wife went to the IGM Hospital, Ichalkaranji. In his cross-examination, he had denied the suggestion that Salama was not willing to cohabit with the Appellant and that Salama had run away from the house of the Appellant. He has stated, that there was no other complaint against the Appellant, except, demand of money for purchase of a vehicle. He has admitted, that the Appellant had taken Salama to the IGM Hospital and admitted her and that before he reached the IGM Hospital, his family members were already present in the hospital. He has admitted to the execution of the stamp paper by Salama, and has identified Salama's signature as well as his own signature on the stamp paper, which is at Exhibit-33. He has denied the suggestion that Salama was not ready to accept the Appellant as her husband and did not allow him to touch her and was not ready to cohabit with the Appellant.

10. It is pertinent to note, that the stamp paper executed by Salama on 28th March, 2005 and which is admitted by the aforesaid two witnesses PW. 6-Ratan and PW. 10-Manjur states, (i) that there was some mis-understanding between the parties and therefore from today i.e. 28th March, 2005 she would not leave the house of the Appellant without informing anybody; (ii) that henceforth she would live happily; (iii) that she would not behave in any manner which will cause harassment to the others; (iv) that if there is any complaint she will take whole responsibility and nobody else will be responsible for the same. The said "vachan chitthi" was executed on 28th March, 2005 and has been exhibited vide Exhibit-33.

11. To prove the two dying declarations of Salama, the prosecution has examined, PW. 13-ASI Yallappa Desai who is alleged to have recorded Salama's statement on 13th July, 2005 which is at Exhibit-28 and PW. 7-Special Executive Magistrate, Ashok Kamble who has recorded the second dying declaration on 15th July, 2005 vide Exhibit-24 and the scribe of Exhibit-24, PW. 8-Vijay Sangar. The prosecution has also examined PW. 9-Dr. Todkar to prove the dying declaration at Exhibit-28 and PW. 11-Dr. Bankar to prove the dying declaration at Exhibit-24. The contents of both the dying declarations are almost identical and are in detail, necessary and unnecessary, minute and material. The declarant has started with family particulars and goes on to say about her education and the details of her family and thereafter has stated that the Appellant poured kerosene and set her on fire, due to non-fulfillment of money, for purchase of a vehicle. Both these dying declarations are conspicuous by the absence of the Appellant having extinguished the fire and having admitted Salama to the hospital. Salama succumbed to her injuries on 22nd July, 2005. PW. 5-Dr. Pradeep Mane who conducted the post mortem vide Exhibit-20, has stated that the cause of death was septicaemic shock due to 100% burns.

12. PW. 13-ASI Desai has stated, that he had been to the hospital on 13th July,

2005 at about 9.00 a.m. and had recorded the dying declaration (Exhibit-28) in the presence of PW. 9-Dr. Todkar. He has stated, that PW. 9-Dr. Todkar after examining Salama made an endorsement on the same, stating that Salama was in a state to give her statement. He has stated that on questioning, Salama disclosed various details pertaining to her family, education and that the Appellant was demanding Rs. 10,000/- for purchase of a vehicle from her family. Salama is also alleged to have stated, that on 13th July, 2005 at about 4.00 a.m., the Appellant woke her up from her sleep and stated that she should go home and bring Rs. 10,000/- for purchase of a Motorcycle and if she does not bring the same, she should not come back home. Salama is alleged to have stated that she would not bring the money from her family members and on hearing this, the Appellant is alleged to have got angry; taken her near the bathroom and sprinkled kerosene on her person from the stove and set her on fire. She has stated, that after setting her ablaze he pushed her outside the house. She has stated that she does not know who extinguished the fire on her person. There is one more paragraph setting out the same details as afore-stated again. PW. 13-ASI Desai has stated, that after recording the said statement, he read over the same to her and Salama is alleged to have put her signature below the said statement. He has further stated, that he affirmed the signature on the said statement as having being recorded in his presence. PW. 9-Dr. Todkar has also stated to have affixed his signature on the said statement which is Exhibit-28. PW. 13-ASI Desai has identified his signature, that of Salama and of Dr. Todkar. He has further stated, that on the basis of the said statement, offence came to be registered vide C.R. no. 79 of 2005 with the Shivaji Nagar Police Station, Ichalkaranji, as against the Appellant.

13. PW. 13-ASI Desai has further stated, that on 22nd July, 2005, he received a letter from the IGM Hospital regarding the death of Salama, pursuant to which he went to the IGM Hospital and drew the inquest panchanama which is at Exhibit-15. He has stated that AD number was mentioned in the inquest panchanama. It is elicited in the cross-examination of PW. 13-ASI Desai, that he had not recorded the dying declaration in question and answer form, though it is required to be recorded in the question and answer form. He has stated in his cross-examination, that the fingers of Salama were not burnt and that he had not enquired whether any sedative was given to Salama. He has denied the suggestion that Salama could not hold the pen in her hand as her fingers were burnt. He has categorically stated in his cross-examination, that Salama had affixed her signature when she was lying on her bed in a supine position and that she signed on the said statement by holding the writing pad in another hand and by keeping the writing pad near her chest. He has further stated, that he did not remember whether the palms of Salama were burnt or not.

14. PW. 9-Dr. Todkar, the medical officer at IGM Hospital, Ichalkaranji has stated, that on 13th July, 2005 he was on duty as a Casualty Medical Officer. He has stated that on 13/7/2005, at about 9 a.m. ASI Desai, (PW. 13) had come to the hospital and disclosed to him that he wanted to record the statement of a burns

patient and accordingly, he went to the burns-ward along with ASI Desai, and examined Salama, aged 19 years. He has stated that he made an endorsement on the paper, stating thereon, that the patient was conscious and in a state to give a statement. He has further stated, that ASI Desai recorded the statement of Salama and after recording the same he again examined Salama and made an endorsement on the said statement which is at Exhibit-28. It is elicited in the cross-examination of the said witness, that his statement was not recorded by the police during investigation.

15. PW. 9-Dr. Todkar has produced the original case papers of Salama which are at Exhibit-30. He has admitted in his cross-examination that on 13/7/2005 he had not made any entries on the case papers of Salama. He has identified the signature of Dr. Khot on which he has made an endorsement that at 7.15 a.m. "the patient is not in a condition to give a police jawab". It was stated in the case papers, that the patient was admitted in the hospital at 6.00 a.m. and was not in a position to talk and that the history was given by the husband of the patient, as suicidal burns. He has admitted that the case papers, Exhibit-30 disclosed, that as the condition of Salama was serious, the same was informed to her husband and there is an endorsement to that effect in the case papers, signed by the Appellant at 6.45 a.m. and thereafter there are endorsements made by Salama's father and uncle to that effect. He has further admitted, that when Dr. Khot examined Salama at 7.15 a.m. Salama's condition was very serious. It is elicited in his cross-examination that he had not seen the case papers of Salama before making an endorsement on Exhibit-28. He has stated, that he has nowhere mentioned in the case papers at Exhibit-30, that he had examined Salama on 13/07/2005. It is elicited in his cross-examination, that there is an entry in the case papers, that at 9.00 a.m. Salama was administered fortwin and compose. It is further elicited, that he was not given a request letter, by PW. 13-ASI Desai for recording the statement of Salama and that he knew ASI Desai (PW. 13) prior to 13/07/2005. He has also admitted that the fingers of the patient were burnt, however he does not remember in which position, she put her signature on the statement, at Exhibit-28.

16. PW. 7-S.E.M. Ashok Kamble, had been to the IGM Hospital, on being requisitioned, by the Shivaji Nagar Police Station to record the dying declaration of Salama. He has stated, that on 15th July, 2005 he was working as a Naib Tahsildar and had received a letter from the Shivaji Nagar Police Station to record the statement of Salama. Accordingly, he along with his clerk Vijay Sangar (PW. 8) had gone to the IGM Hospital, Ichalkaranji at about 5.15 p.m. He has stated that he recorded the dying declaration of Salama in the presence of Dr. Bankar (PW. 11) and that Dr. Bankar made an endorsement on the said statement. PW. 7-S.E.M. Ashok Kamble has stated that Salama disclosed to him the manner in which Salama was set on fire by the Appellant. The details of the said statement set out in Exhibit-24 are almost identical to that of Exhibit-28 i.e. it contains all minute and material details. He has stated that he had recorded the statement of Salama as per her say and that the contents were read over to

her. He has further stated, that, as Salama was not in a position to hold a pen in her hand, he obtained her left hand thumb impression on her statement. He has stated, that his clerk Vijay Sangar (PW. 8) had attested the thumb impression of Salama. He has further stated that thereafter he showed the statement of Salama to Dr. Bankar (PW. 11) and obtained his signature on the same. He also signed the statement of Salama as having being recorded before him. It is elicited in his cross examination that "Salama was not in a position to put her signature and that the hands and fingers of Salama were burnt. "He has admitted that the last line on the statement of Salama "thumb impression is obtained as patient is not in condition to sign" was written as per his say. He has further admitted that the condition of Salama was poor (critical). PW. 8-Vijay Sangar, clerk of the Naib Tahsildar has been examined by the prosecution, as he had scribed the dying declaration, Exhibit-24. He has identified the thumb impression of Salama as having being attested by him. It is elicited in his cross examination, that after recording the statement he went to Dr. Bankar's (PW. 11) office, to obtain his endorsement and that he took two signatures of Dr. Bankar (PW. 11) on the said statement after recording Salama's statement.

17. PW. 11-Dr. Bankar has also been examined to prove the dying declaration Exhibit-24 recorded by PW. 7-S.E.M. Ashok Kamble. PW. 11-Dr. Bankar has stated, that he was on duty on 15th July, 2005 when the SEM Ashok Kamble (PW. 7) had come to record the statement of Salama. He has stated that he examined Salama and found her conscious and accordingly, made an endorsement in the margin of the paper. He has stated, that, S.E.M. Ashok Kamble (PW. 7) recorded the statement and after completion of the same, he again examined her and found her to be conscious and accordingly, made an endorsement at the bottom of the page, which he has identified. On being confronted with the case papers i.e. Exhibit-30, PW. 11-Dr. Bankar in his cross-examination has admitted, that it appears that at the time of Salama's admission, her pulse was not felt, B.P. was not recordable and that her condition was very serious. He has further admitted, that on 13th July, 2005, he had given instructions to give sedatives like fortwin and compose to the patient. He has further stated, that on 13th July, 2005, no statement of Salama came to be recorded in his presence and that no police officer had requested him on 13th July, 2005, to record the statement of Salama. He has admitted, that, he had not mentioned in the case papers anything with regard to the examination of Salama or recording of the dying declaration i.e. Exhibit-24. He has admitted that in burn cases, the patients are in severe pain and that patients usually go into hypovolemic shock. He has admitted in his cross-examination, that Salama was not in a position to sign. He has denied the suggestion that he had not visited Salama on 15th July, 2005 and the endorsement on Exhibit-24 was made in his office.

18. Salama succumbed to her injuries on 22nd July, 2005. PW. 5-Dr. Mane who conducted the postmortem examination on deceased Salama on 22nd July, 2005, which is at Exhibit-20, has stated, that he found 100% deep burn injuries and

that her skin and subcutaneous tissues were destroyed. He also found multiple ulceration all over the body and that there was pus and foul smell. On internal examination, he found that both lungs were in shrunken condition and were congested. According to him, the principal cause of death was septicaemic shock due to 100% burns and that the burns on the dead body were sufficient in the ordinary course of nature to cause death.

19. The prosecution also examined, PW. 1-Sunil Kate to prove seizure of clothes of the Appellant at Exhibit-13; PW. 2-Sarayya Makandar, panch to the inquest panchanama vide Exhibit-15 and PW. 4-Sakhar Mulla, panch to the spot panchanama at Exhibit-18. The evidence of PW. 1-Sunil shows that clothes of the Appellant were smelling of kerosene, and the C.A. Report confirms the same. PW. 4-Sakhar Mulla has in his evidence stated that there were two rooms in the house of the Appellant and that he had seen a stove, stove lid and one match box lying outside the bathroom and the said articles came to be seized vide Exhibit-18.

20. Learned Counsel for the Appellant has canvassed before us; (i) that the prosecution case rests on circumstantial evidence, the chain of which is not complete. (ii) that both the dying declarations (Exhibit-28 and Exhibit-24) appear to be highly doubtful and suspicious in the light of the evidence that has come on record and as such ought to be excluded from consideration (iii) that implicit reliance cannot be placed on the evidence of PW. 6-Ratan Awati, maternal grand father and PW. 10-Manjur Awati, father of the deceased Salama, with regard to the demand of Rs. 10,000/- for purchase of the vehicle in the light of the stamp paper i.e. Exhibit-33, executed by the deceased Salama.

21. The learned APP has contended that the Judgment rendered by the trial court is legal and proper and ought not to be interfered with and supported the conviction of the Appellant.

22. We have given our anxious consideration to the submissions advanced before us and after going through the evidence on record, are of the opinion that the prosecution has not proved the circumstances beyond reasonable doubt.

23. We have gone through the evidence of PW. 13-ASI Desai, who recorded the dying declaration, Exhibit-28 on 13/07/2005 in the presence of PW. 9-Dr. Todkar and find that the said dying declaration does not inspire confidence and is riddled with several infirmities. We have also gone through the medical case papers at Exhibit-30. Admittedly, deceased Salama had sustained 100% burn injuries. The medical case papers at Exhibit-30 show, that Salama was brought to the IGM Hospital, Ichalkaranji by the Appellant on 13/07/2005 at 6.00 a.m. It is stated that "patient is unable to talk". The Appellant had given "history of suicidal burns half an hour ago" The medical case papers further show that Salama was semi-conscious, pulse-not felt, BP not recordable and that her general condition was serious. The percentage of burns shown on both hands was 18%; both legs-36%; chest-9%; Abdomen-9%, back-9%; buttocks-9%; face-9%; private

parts-1%. The burns were superficial to deep burns. It was stated that police should be informed. At 6.45 a.m., the entries in the case paper show that the general condition was serious, patient-semi-conscious, "patient is not talking"; and that "the patient is not in a condition to give Police Jawab". At 6.45 a.m. there is an endorsement of the Appellant, wherein he has written, that he has been informed by the Doctor that the condition of his wife is extremely serious.

24. It is in the light of the afore-stated evidence, that we have examined the dying declaration, Exhibit-28 recorded by PW. 13-ASI Desai, in the presence of PW. 9-Dr. Todkar on 13/07/2005; and the dying declaration recorded by PW. 7-SEM Ashok Kamble and scribed by PW. 8-Vijay Sangar, in the presence of PW. 11-Dr. Bankar on 15th July, 2005.

25. We have gone through the evidence of PW. 13-ASI Desai, who recorded the dying declaration at Exhibit-28 of Salama on 13/07/2005 and the evidence of PW. 9-Dr. Todkar who examined Salama and made an endorsement with regard to her consciousness on the said statement, Exhibit-28. Both these witnesses have stated that Salama had put her signature below her statement. We find it incomprehensible, as to how Salama could affix her signature on the statement at Exhibit-28, when she had sustained 100% burn injuries and in the light of the evidence of Dr. Bankar (PW. 11) and SEM Ashok Kamble (PW. 7) who recorded Salama's statement on 15/07/2005 i.e. the second dying declaration at Exhibit-24. Both, Dr. Bankar (PW. 11) and SEM Ashok Kamble (PW. 7) have categorically stated that "Salama was not in a position to hold the pen as her hands were completely burnt" and therefore had taken her thumb impression on her statement, Exhibit-24 i.e. second dying declaration recorded on 15th July, 2005. As PW. 13-ASI Desai and PW. 9-Dr. Todkar have stated, that Salama signed the said statement, we perused the original record, Exhibit-28 and found the signature to be extremely neat and placed exactly at the place meant for the signature. We also find, that Salama's alleged signature on Exhibit-28 defers from Salama's accepted signature on the stamp paper i.e. on Exhibit-33. Therefore, in the light of the afore-stated evidence, it would be extremely unsafe to accept the testimony of both these witnesses i.e. PW. 13-ASI Desai and PW. 9-Dr. Todkar, as their evidence does not inspire confidence and cannot be said to be free from embellishment.

26. Coming to the second dying declaration, recorded on 15/07/2005 by PW. 7-SEM Ashok Kamble and scribed by PW. 8-Sangar in the presence of PW. 11-Dr. Bankar, we find, that their evidence also does not inspire confidence and it would be extremely unsafe to rely on their testimony. Considering the material inconsistencies in the evidence of PW. 7-S.E.M. Ashok Kamble and PW. 8-Sangar who scribed the second dying declaration, Exhibit-24, with regard to the presence of PW. 11-Dr. Bankar at the time of recording the statement of Salama and the other evidence on record, we feel it would be extremely unsafe to place any reliance, much less implicit reliance on the dying declaration at Exhibit-24. It is pertinent to note, that although PW. 7-SEM Ashok Kamble and PW. 11-Dr

Bankar have stated that the statement was recorded in their presence, PW. 8-Sangar, in his cross-examination has admitted that PW. 11-Dr. Bankar had put his signature on the said statement, Exhibit-24, in his office and that Salama's thumb impression was attested in Dr. Bankar's office. In the light of the said evidence, coupled with the fact, that injections like fortwin and compose were being administered to Salama from 13/07/2005 and the fact that the case papers, Exhibit-30 show that Salama's condition was extremely serious, since her admission on 13/07/2005 at 6.15 a.m. and that she was not in a position to talk, it would be unsafe to place any reliance even on the second dying declaration at Exhibit-24. Apart from the afore-stated evidence, we have also perused the original dying declaration, at Exhibit-24, on which Salama is alleged to have put her thumb impression and find that despite Salama having sustained 100% burn injuries and her fingers being burnt, there are ridges and curves seen on her thumb impression at Exhibit-24, giving us reason to suspect the genuineness of the said dying declaration. It would be useful to refer to the decision of the Supreme Court, in the case of The State of Punjab Vs. Gian Kaur and Another, which upheld the decision of the High Court, which had disbelieved the dying declaration, on the ground, that though the medical evidence showed that deceased had sustained 100% burns, the thumb mark of the deceased appearing on the dying declaration had clear ridges and curves.

27. We, also find, that both the dying declarations at Exhibit-28 and Exhibit-24 are in great detail and considering her medical condition, we find it difficult to accept the same. The Supreme Court in the case of Paramjit Singh and others Vs. State of Punjab, held, that if all the details are given in the dying declaration the same may not inspire confidence of the Court in as much as, a neatly structured dying declaration may bring an adverse effect in the mind of the Court and that it is for the Court to examine the dying declaration as a whole to see whether a ring of truth emerges from the same. It is pertinent to note, that despite the fact, that the Appellant had extinguished the fire and admitted Salama to the IGM Hospital, the said fact is conspicuous by its absence in both the dying declarations, allegedly given by Salama.

28. We have scrutinized both the dying declarations minutely and find that both the dying declarations are not free from infirmities and it would be extremely hazardous to place any reliance on both these dying declarations as they do not inspire confidence and therefore would have to be excluded from consideration.

29. As far as evidence of PW. 3-Mohan Gagare is concerned, with regard to Salama having disclosed that the Appellant had set her on fire, his evidence does not inspire confidence in the light of the evidence that has come on record.

30. With regard to the evidence of PW. 6-Ratan, the maternal grand father of Salama, going to the spot after learning that Salama had sustained burn injuries; leaving her on the road even after seeing her and then going to the Masjid to offer prayers and then to his house to inform the relatives, is far from trustworthy or credible and therefore cannot be relied upon. The trial court has

also rightly disbelieved PW. 6-Ratan, as his conduct, was not the natural conduct of a grand father.

31. The evidence of PW. 6-Ratan, and PW. 10-Manjur on the point of demand of money of Rs. 10,000/- for purchase of vehicle, will have to be considered in the light of the evidence that has come on record. We have perused the evidence of both the witnesses and the stamp paper at Exhibit-33 and find that there was some marital discord between deceased Salama, who was a young girl of 19 years and the Appellant. The contents of the stamp paper have been admitted by both these witnesses and therefore in the light of this document and the evidence of these witnesses, the possibility of Salama having gone to her marital house, against her wishes cannot be ruled out and subsequently committing suicide. From the evidence on record, it appears, that it was the Appellant who extinguished the fire, took Salama to the IGM Hospital and gave history to the Doctor as suicidal burns and on admission even stayed with her in the hospital. As far as, finding of kerosene residues on the clothes of the Appellant, we find that the same cannot be termed as incriminating, in as much as, admittedly the Appellant had taken her to the hospital.

32. We therefore find, that the prosecution had utterly failed to prove the offence against the Appellant beyond reasonable doubt. We find that the possibility of deceased Salama having committed suicide cannot be ruled out all together.

33. In cases of circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstance so proved should be of an incriminating nature and should form a complete chain, which should exclude every hypothesis of innocence of the accused and should unerringly point to the guilt of the accused. In other words, the circumstances should be of such a nature as to lead to the conclusion that it is the accused and the accused alone who committed the offence.

34. In the present case, we find that the prosecution has failed to forge a chain of circumstances which would exclude every hypothesis of the innocence of the Appellant. The Appellant, therefore, in our opinion would be entitled to be given the benefit of doubt. In the premise, Criminal Appeal is allowed and the conviction and sentence of the Appellant is hereby quashed and set aside and the Appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in jail, he be released forthwith, if not required in any other case. Writ is expedited.