

(2017) 01 KAR CK 0233
In the Karnataka High Court
Case No : 2659 of 2012

Shankarayya

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#), [Section 1767-30](#)

Citation : (2017) 01 KAR CK 0233

Hon'ble Judges : Ravi Malimath, K. Somashekar

Bench : DIVISION BENCH

Advocate : A.R. Patil, V.M. Banakar

Judgement

1. The case of the prosecution is that the deceased Laxmi of Ugarkod was got married to accused No. 1 - Shankrayya of Tadakod about 3 years prior to the incident. The accused No.2 and accused No.3 are respectively the mother and step-mothers of accused No. 1 and accused No.4 is his full brother. Subsequent to the marriage, the deceased Laxmi went to her matrimonial house to discharge her marital obligations and began to reside with accused No. 1 and his family. That she did not begotten children out of their wedlock. On festival occasions, she used to visit her parental house at Ugarkod. On account of not begetting any child by her, the accused persons were harassing her physically and mentally and also used to assault her. The accused were having a house at Khanapur near Tadakod. Both the mothers of accused No. 1 and his brother were insisting the deceased Laxmi and accused No. 1 to reside in the said house. The deceased Laxmi was not ready to reside in the said house as accused may ill-treat her more without caring her. In this regard also the accused used to harass her physically and mentally and used to beat her. The accused No.2 - Kamalawa and accused No.3 - Kashawa together with accused No. 1 - Shankrayya being the husband of the deceased, by taking all the provisions in the house went to the

house at Khanapur and they began to reside there without providing anything to the deceased Laxmi. For about 3 days she was in a fast condition and unable to tolerate her health situation, the deceased Laxmi asked her husband - accused No. 1 to take her to Ugarkod and leave her at her parents house. Thus, on 28.02.2008 at 4.00 pm, the deceased Laxmi came to Ugarkod with her husband accused No. 1 and asked him to go back to Tadakod as the bullocks are uncontrollable for anybody except her husband accused No. 1. But the accused No. 1 expressed that he will stay with her at Ugarkod for about 4 days. However, on that day at 10.00 pm, after having dinner, Smt. Laxmi and accused No. 1 - Shankrayya slept in a room, whereas PW6 - Smt. Kashawa mother of the complainant and PW8 - Sri. Malkyya, brother of the complainant slept in another room and PW7 - Sri. Irayya, father of the complainant went to Panchayat office for sleeping. Thereafter, accused No. 1 - Shankrayya did not go for sleep under the guise that some insects are biting him and so asked to put on chimni. The deceased Laxmi went to her mother and brought lighted chimni and kept some distance ahead of pillow of her husband accused No. 1. In spite of that, her husband accused No. 1 Shankrayya did not go for sleep and by that time, it was 1.00 O'clock mid night. After a while, the deceased Laxmi went in deep sleep. Around 3.00 O'clock mid night, accused No. 1 - Shankrayya brought kerosene oil and pouring it over the person of his wife set her ablaze by scratching matchbox. On account of fire flame found on her person, Smt. Laxmi began to make hue and cry and tried to go out of the room. But her husband accused No. 1 Shankrayya restrained her from going out of the room by pushing her inside. Anyhow the deceased Laxmi came out of the room. Her mother PW6 and her brother PW8 also came and her brother went to bring her father. The deceased Laxmi jumped into the water sump to extinguish the fire. Immediately, in the auto rickshaw of one Sri. Nadagoudar, the injured Laxmi was brought to Kittur by her parents, her uncle PW13 - Sri. Basayya and thereafter, in a tractor she was brought to Belgaum District Hospital, wherein she got admitted for treatment for having suffered burn injuries on account of pouring kerosene over her person and setting her ablaze. The accused persons together gave physical and mental harassment to the deceased Laxmi on account of she not begetting any child and committed her murder. On the basis of the complaint at Ex.P29 given by the injured Laxmi, law had been set in motion and the Kittur Police have registered a case in Crime No.43 of 2008 for the offences punishable under Sections 341, 498(A) and 307 Read with Section 34 of the Indian Penal Code. She was under treatment for the burn injuries suffered in the District Hospital, Belgaum and on 03.03.2008, the injured Laxmi has breathed her last on 3.15 pm. So the charge was altered from Section 307 of IPC to Section 302 of the IPC. The Investigating Officer has taken up the case and laid the charge sheet against the accused for the alleged offences. Charges have been framed. The accused pleaded not guilty.

2. In order to prove the guilt of the accused, the prosecution in all examined 25 witnesses as PWs 1 to 25 and marked 35 documents at exhibits P1 to P35 along with 2 material objects M.O.1 and M.O.2. The learned Sessions Judge on examining the material evidence on record found the accused No. 1 Shankrayya

guilty of the offences and convicted him for the offences punishable under Sections 498(A), 302 read with Section 34 of the IPC and acquitted accused Nos. 2 to 5 of the offences punishable under Sections 498(A), 302 read with Section 34 of the IPC. Hence, the accused No. 1 has preferred this appeal seeking for acquittal by allowing this appeal. 3. The learned counsel for the appellant during the course of his arguments has contended that the learned Sessions Judge has misread the evidence which were placed by the prosecution, such as Ex.P29 - complaint which is given by the injured Laxmi and so also Ex.P15 - dying declaration recorded by the Taluka Executive Magistrate. There are inconsistencies and discrepancies in these documents, which are vital for the prosecution case. Ex.P15 dying declaration is recorded by the Taluka Executive Magistrate. The injured Laxmi was in a physical as well as mental befit condition to give her statement that she sustained burning injuries over her person as her husband accused No. 1 poured kerosene over her person and set her ablaze by scratching the match stick. The prosecution in order to bring home the guilt of the accused in all examined 25 witnesses and also got marked material documents. Among the witnesses examined for the prosecution, PW9 - Channawa, PW12 - Channawa, PW13 - Basayya have not given the evidence regarding the theory of the prosecution as put forth that the accused No. 1 had poured kerosene over the person of his wife and set her ablaze by scratching the match stick, as a result of which she sustained burn injuries and lost her breath. These material witnesses for the prosecution have been rendered animus to the prosecution theory. As this evidence is very much required to be re-appreciated in this appeal coupled with the material evidence of both the documents at Ex.P29 - complaint given by the injured Laxmi and also the dying declaration at Ex.P15, as to how she sustained burn injuries by her husband who poured kerosene over her person and set her ablaze by scratching match stick. The dying declaration given by her is recorded by the Taluka Executive Magistrate. The doctor also certified prior to the taking of the dying declaration which is recorded by the Taluka Executive Magistrate that the injured was in a befit mental condition to give her statement and also made an endorsement on the dying declaration given by the deceased Laxmi. Based on both the documents at Exs. P29 and P15 given by the deceased Laxmi, the law had been set in motion. As per the statement at Ex.P29 as well as the dying declaration given by the deceased Laxmi, both these documents run contrary to each other. Therefore, whether the dying declaration at Ex.P15 is given truthfully and voluntarily is to be appreciated in this appeal by reflecting the evidence, which is placed by the prosecution. It is further contended that considering the inconsistencies and discrepancies in the evidence of prosecution, the accused be acquitted of the charges levelled against him. 4. The learned counsel for the appellant has placed reliance on the following decisions of the Hon'ble Apex Court and this Court in support of his contentions: i. (2014) 3 SCC (Cri) 216 (Umakant and Another v. State of Chhattisgarh) ii. (2014) 3 SCC (Cri) 225 (Sompal Singh and Another v. State of Uttar Pradesh) iii. (2014) 3 SCC (Cri) 380 (Jumni and Others v. State of Haryana) iv. (2014) 3 SCC (Cri) 389 (State of Bihar and Others v. Rajmangal

Ram) v. 2016 Cr.R.517 (Kant.) (State by Holehonnur Police v. Parameshwarappa and Others) vi. 2016 Cr.R.523 (Kant.) N. Nataraja and Others v. State of Karnataka and Another) 5. On controvertible to the arguments advanced by the learned counsel for the appellant, the learned Addl. State Public Prosecutor has taken up the contention that Ex.P29 - complaint is given by the injured Laxmi while she was taking treatment at District Hospital, Belgaum due to die burn injuries suffered by her. Based upon her statement at Ex.P29, the law had been set in motion by registering the FIR. That the deceased Laxmi while she was on treatment in the District Hospital, Belgaum had given dying declaration as per Ex.P15 which is recorded by the Taluka Executive Magistrate based on the request made by the head constable by submitting the requisition as per Ex.P16. The learned Sessions Judge has analysed the evidence put forth by the prosecution keeping in view of the narration of the facts at Ex.P29 and so also the dying declaration at Ex.P15 which is given by the deceased and recorded by the Taluka Executive Magistrate and has rightly come to the conclusion that the prosecution has proved the guilt against the accused No. 1- her husband that he had poured kerosene over her person and set her ablaze by scratching match stick, as a result of which she sustained burning injuries. It is further contended that the prosecution in order to bring home the guilt of the accused in all examined 25 witnesses and got marked material documents. The injured Laxmi was in a befit mental condition to give her statement as per Ex.P15 in the form of dying declaration which recorded by the Taluka Executive Magistrate and endorsement was also made by the doctor that the injured was in a befit mental condition to give her statement. The deceased Laxmi has given the statement in the form of complaint as per Ex.P29. Based upon her complaint FIR came to be registered. On the same day the dying declaration at Ex.P15 was also recorded by the Taluka Executive Magistrate. There is no dispute about the accused No. 1 being her husband was present with bet at the rime of incident. As he was present along with the deceased Laxmi, the last seen theory is very well made applicable against the accused No. 1. As the accused No. 1 Shankrayya being the husband of the deceased, shall explain the circumstances leading to the death of his wife deceased Laxmi, as she was with him in the scene of incident and also how she caught hold by fire and sustained burning injuries. Ex.P 5 - dying declaration recorded by PW11 being the Taluka Executive Magistrate is in a narrated form that she has given her statement on question and answer form. She has specifically stated in question No.8 how the accused has given physical as well as mental harassment to her by not providing food to her. She has also specifically stated that while she was slept, at 3.00 O'clock mid night, her husband poured kerosene over her person and set her ablaze. While she was screaming for help on finding the fire, her mother, her brother and neighbouring persons also came there to put off the fire. PW11 being the Taluka Executive Magistrate recorded the dying declaration in the presence of PW18 being the doctor who given endorsement as per Exs.P15(a) and P15(d) to the effect that the injured was in a befit mental condition to give her statement. These evidences are appreciated by the learned Sessions Judge and rightly convicted

the accused for the charges levelled against him and the same shall be maintained. 6. The learned Addl. State Public Prosecutor for the State has placed reliance on the following decisions of the Hon"ble Apex Court in support of his contentions: i. 2009 Cri.L.J.4408 (Kamalawa & Anr. v. State of Karnataka) ii. 2009 Cri.L.J.4413 (K. Ramachandran v. V.N. Rajan and Anr.) iii. (2015) 2 SCC (Cri) 733 (Vijay Pal v. State (Government of NCT of Delhi) 7. Heard learned counsels and examined the evidence on record. 8. On 29.02.2008 at about 7.15 am, PW24 - Channakeshav, Sub Inspector of Police of Kittur Police Station received wireless message regarding the admission of the injured Laxmi to Belgaum District Hospital for treatment for sustaining burn injuries and also got message that the accused No. 1 Shankrayya was also admitted in the same hospital for treatment. Subsequent to the receipt of information, he accompanied with his staff to Belgaum District Hospital, wherein he contacted the doctor on duty in that hospital, from whom he obtained Ex.P2 written certificate that the injured Laxmi was in a befit mental condition to give her statement. Subsequent to that, on confirmation that the injured was mentally and physically befit to give her statement, he recorded the statement of the injured as per Ex.P29. Thereafter, the PSI approached the Taluka Executive Magistrate, Belgaum and requested him to record dying declaration of the injured Laxmi by sending Ex.P16 requisition through head constable of APMC. Based upon the statement of the injured as per Ex.P29 complaint, he registered a case in Crime No.43 of 2008 for the offences punishable under Sections 341, 498(A), 307 of the IPC against the accused persons by sending Ex.P30 FIR to the Court. Thereafter he visited the scene of offence wherein he secured panchas namely Shankar, Somalingayya and in their presence he conducted Ex.P1 scene of offence panchanama and also seized M.O.I match box and bottle. Apart from this, he drew the sketch of scene of offence as per Ex.P31 and taken photographs as per Ex.P2(a) and (b). Thereafter he examined Channawa, another Channawa, Basayya, Dundawa, Kashawa, Basavangcudra by way of recording their statements under Section 161 of Cr.P.C. He also recorded statements of Irayya, Kashawa and Nagayya. On 03.03.2008, he received a message from Belgaum that the injured Laxmi has breathed her last at 3.15 pm. Thereafter a requisition was made by him as per Ex.P32 for replace of the offence under Section 302 of the IPC in the crime which has already been registered against the accused. Later PW21 Dayanand has taken up further investigation and requested the Tahasildar to hold inquest panchanama, as the deceased Laxmi died within three years of her marriage. The articles of the deceased have been seized under Ex.P4 panchanama in the presence of Sonnappa, Mahadev and M.O. 2 gunny bag is also seized under it. All the seized articles were subjected to Property Form and retained under the orders of the Court. On 10.03.2008, the Taluka Executive Magistrate, who hold inquest over the dead body, as per Ex.P3 Inquest Panchanama and it was taken on record. On 20.06.2008, the Tahsildar forwarded Ex.P15 dying declaration which is recorded by him. On 26.06.2008, accused No. 1 - Shanluayya produced the property extract of his house as per Exs.P33 and P34. These documents were included in the charge sheet and were placed before the Committal Court. 9. On

close scrutiny of the narration in the complaint at Ex.P29 and also the dying declaration at Ex.P15, it can be seen that the contents therein are contrary- to each other, but it cannot be accepted for the defence. The deceased has stated the cruelty and torture given to her by the accused for not begetting any child through her wedlock with him. The marriage of the deceased was performed with the first accused Shankrayya for about three years prior to the incident. As there is a presumption under Section 113B of the Evidence Act, her husband accused No. 1 abetted himself/committed murder of the deceased. 10. On appreciation of the evidence of the prosecution, the learned Sessions Judge has come to the conclusion that the prosecution has proved the guilt against the accused No. 1 - Shankrayya who had given physical as well as mental harassment to the deceased and also poured kerosene over her person and set her ablaze, as a result of which she sustained bum injuries and succumbed to the injuries. So also appreciated the statement given by the injured as per Ex.P29 and also the dying declaration at Ex.P15, which is recorded by the Taluka Executive Magistrate in the presence of doctor, who had made an endorsement on the dying declaration. PW.21, PW24 and PW25 are the Investigating Officers who have stated in their evidence regarding the investigation carried out by each one of them. Ex.P3 is the inquest panchanama conducted over the dead body, in the presence of PW5. Seizure Mahazer Ex.P4 is in the presence of PW3 and PW4. PW7 being the Tahasildar recorded the statement of PW6. PW14 being the doctor conducted autopsy over the dead body and issued post-mortem report as per Ex.P21. PW11 being the Taluka Executive Magistrate recorded the dying declaration as per Ex.P15 on 29.02.2008 at about 8.15 pm. PW18 being the doctor examined the injured Laxmi and found her in a fit condition and thereby issued certificate as per Ex.P24(a). He has also subscribed her signature at Ex.P15(b), Ex.P15(a) and Ex.P15(d), while recording the dying declaration by the Taluka Executive Magistrate in her presence PW19 being the doctor has specifically stated that on 29.02.2008 at 6.20 am, she examined accused No. 1 - Shankrayya who found that he has sustained deep bum injuries over the body and issued certificate as per Ex.P25. PW20 who conducted inquest over the dead body of the deceased as per Ex.P3 on 3.03.2008. PW24 being the PSI recorded the FIR as per Ex.P30 based upon Ex.P29 - statement given by the injured Laxmi and registered a case in Crime No.43 of 2008 and proceeded for investigation. As he is the Investigating Officer laid charge sheet against the accused. 11. These evidence placed by the prosecution have been analysed by the learned Sessions Judge in proper prospective to come to the conclusion that the prosecution has proved the guilt against the accused No. 1 - Shankrayya beyond all reasonable doubt. As already been stated that the prosecution in all examined 25 witnesses and proved the guilt against the accused. But the private witnesses as well as the family members of the deceased ate animus to the prosecution. But the official witnesses for the prosecution, such as police personnel have given evidence before the Court in respect of their acts, which is to be played by them during the course of investigation. On 29.02.2008 at about 3 00 am, the incident had occurred, where the accused - Shankrayya and deceased Laxmi were slept in the

house and the accused No. 1 poured kerosene over her person and set her ablaze by scratching match stick, as a result of which she sustained bum injuries as indicated at Ex.P21 and also indicates bum injuries found over her person as per Ex.P15. The deceased Laxmi was admitted in the District Hospital at 6.00 am on 29.02.2008. PW18 being the doctor examined the injured and got her admitted in the hospital. Ex.P21 - postmortem report reveals that the injured Laxmi died on 03.03.2008 at 3.15 am. As she was survived for 2-3 days, moreover, on 29.02.2008 itself from 9.00 am to 10.00 am, PW11 being the Tahasildar has recorded Ex.P15 dying declaration of injured Laxmi. On the same day between 10.15 am to 11.15 am, the Investigating Officer has recorded Ex.P29 complaint of injured Laxmi upon which Ex.P30 FIR came to be registered and reached the Court at 8.00 pm on 29.02.2.008. Admittedly, the death of deceased Laxmi is otherwise than in a natural course and it is unnatural death as can be seen from Ex.P3 Inquest Panchanama which is conducted by PW20 being the Deputy Tahasildar, whose evidence is worthy to be believed as this witness has no sort of interest towards any party to the prosecution. Prior to the death, deceased Laxmi has given her statement by way of Ex.P29-complaint before the Investigating Officer. Based upon her statement FIR has been registered as per Ex.P30 and law had been set in motion for investigation. Admittedly accused No. 1 - Shankrayya being the husband of the deceased Laxmi was last seen in the company of the deceased Laxmi at the time of her death. Therefore the last seen theory can be very well made applicable against the accused No. 1 who is none other than her husband. As this accused is required to explain the circumstances leading to the death of his wife deceased Laxmi while she was fully under his custody and control. 12. The learned counsel for the appellant placed reliance on the following decisions: i. (2014) 7 SCC 405 (Umakant and Another v. State of Chhattisgarh) "The philosophy of law which signifies the importance of a dying declaration is based on the maxim *nemo moriturus praesumitur mentire*, which means., no one at the time of death is presumed to lie and he will not meet his Maker with a lie in his mouth". Though a dying declaration is not recorded in the court in the presence of the accused nor is it put to strict proof of cross-examination by the accused, still it is admitted in the evidence against the general rule that hearsay evidence is not admissible in evidence. The dying declaration does not even require any corroboration as long as it inspires confidence in the mind of the court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of evidence is that such declaration is made by the victim when he/she is on the verge of death. In spite of all the importance attached and the sanctity given to the piece of dying declaration, the courts have to be very careful while analysing the truthfulness, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring. "

ii. (2014) 11 SCC 355 (Jumm and Others v. State of Haryana) "Severability of a dying declaration 33. The next question is whether Asha Deri's dying declaration

can be spilt up to segregate the case of Prem Nath and Raj Bala from the case of the other accused persons. 34. in *Godhu v. State of Rajasthan* this Court found itself unable to subscribe to the view that if a part of the dying declaration is found not to be correct, it must result in its rejection in entirety. It was held: "16 The rejection of a part of the dying declaration could put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. Then may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct. " iii. 2016 Cri.R.517 (Kant.)(State by Holehonnur Police v. Pararneshwarappa and Others) "10. Indisputably conviction can be recorded on the basis of the dying declaration alone but therefore the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the Court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof, if evidence brought on record suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them. In this case the circumstances which have been brought on record clearly point out that what might have been stated in the dying declaration may not be correct. " 13. On the other hand, the learned Addl. SPP has also placed the reliance on the following decisions: i. 1991 Cril.L.J.4321(Paparambaka Rosamma and Others v. State of Andhra Pradesh) "Dying declaration - recording of - doctor at end of certificate only stated that "patient is conscious while recording the statement" - absence of certification that injured was in fit state of mind at time of making declaration - makes dying declaration unacceptable - Opinion by Magistrate recording declaration that injured was in fit state of mind at time of making declaration - Cannot be relied upon. " ii. (2001) 6 SCC 118 (Laxmi (Smt) v. Om Prakash and Others) "I. Nemo moriturus praestitumtur 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. 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 IPC, 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 cross-examination. 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 declarations are more than one and apparently consistent. iii AIR 2011 SC 354 (*Abrar v. State of Uttar Pradesh*) " 6. We have heard the learned counsel for the parties very carefully. It has rightly been pointed out by the learned 8 counsel be borne in mind that all three dying declarations, the first one which formed the basis for the appellant that the entire prosecution story would depend on the dying declarations. It must of the

FIR, the second recorded by like ASI as a statement under Section 161 of the Cr.P.C. and a third recorded by the Tahsildar ate unanimous as all the accused find mention therein. The High Court, has by way of abundant caution, already given the benefit to three of the assailants on the plea, that they, though aimed, had not caused any injury to the deceased. The motive too has also been established as there appeared to be deep animosity between the parties and that the accused Abrar, the appellant had, in fact, appeared as a witness in several cases in which Mohd Ashfaq or his son were the accused. It is true that there are some discrepancies in the dying declarations with regard to the presence or otherwise of a light or a torch. To our mind, however, these are so insignificant that they call for no discussion. It is also clear from the evidence that the injured had been in great pain and if there were minor discrepancies inter-se the three dying declarations, they were 9 to be accepted as something normal. The trial court was thus clearly wrong in rendering a judgment of acquittal solely on this specious ground. We, particularly, notice that the dying declaration had recorded by the Tahsildar after the Doctor had certified the victim as fit to make a statement. The doctor also appeared in the witness box to support the statement of the Tahsildar. We are therefore, of the opinion, that no fault whatsoever could be found in the dying declarations." iv (2010) 6 SCC 533 (Govindappa and Others v. State of Karnataka) "25. In such circumstances, we are of the view that such a dying declaration has got due weight in the evidence. 26. Further, as stated earlier, the doctor has explained that though the deceased Renuka sustained 100% bunt injuries, she war in a position to talk. In such circumstances, her statement cannot be rejected on the ground that she sustained severe burn injuries. Normally, the person on 14 the verge of death will not implicate somebody falsely. v. 2009 CRI.L.J.4408 (Kamalawa and Another v. State of Karnataka) "21. In view of the aforesaid dear and unambiguous factual position we are of the considered opinion that the High Court was totally justified in relying upon the dying declaration recorded by the Taluka Executive Magistrate (PW-17) The technical objection raised by the counsel for the appellant regarding the unavailability of doctor's certification and endorsement as to mental fitness of the deceased, is liable to be rejected in as much as the same has been held by this Court in numerous decisions as a mere rule of prudence and not the ultimate test as to whether or not the said dying declaration was truthful or voluntary. " vi. (2009) 9 SCC 163 (Sukanti Moharana v. State of Orissa) "26. We have scrutinized the contents of the recorded dying declaration which was recorded by the doctor of the hospital where the deceased was treated for her burn injuries. On going through the same we find no infirmity in the said dying declaration as the said dying declaration vividly mentions the manner in which the deceased suffered the bum injuries on pouring kerosene oil on her by the appellant who also lighted the matchstick which caused the fire and burnt the deceased. The appellant not only poured the kerosene oil on the deceased and lit the fire but also closed the door after going out of the said room where the deceased was left to burn by the fire. The said description given by the deceased in the dying declaration recorded by the doctor is clear,

unambiguous and there is no reason why we should not accept the said dying declaration as correct and true version of the incident. 29. The question as to admissibility of such a dying declaration came up for consideration before this Court in several cases. We have considered the Constitution Bench decision of this Court in *Laxman v. State of Maharashtra* reported in (2002) 6 SCC 710. In the said case also then was a dying declaration and a question regarding the admissibility of the said dying declaration was raised. In that connection this Court held that 13 the Court must decide that the declarant was in a fit state of mind to make the declaration, but where the eye witnesses' evidence including the evidence of a Magistrate who had recorded the dying declaration to that effect was available, mere absence of doctor's certification as to the fitness of the declarant's state of mind, held, would not ipso facto render the dying declaration unacceptable. It was also held that the evidentiary value of such a declaration would depend upon the facts and circumstances of the particular case. In paragraph 3 of the said judgment, this Court discussed the juristic theory recording acceptability of a dying declaration in the following manner:- "3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement...." vii. (2009) 13 SCC 614 (*Kamalawa and Another v. State of Karnataka*) "29. PW-17 (Tahsildar) has stated that he was asked by the police to record the dying declaration of the deceased Shoba who was undergoing treatment in the hospital. He proceeded to the hospital and recorded the statement in the presence of Dr. M.S. Sangoili (PW-18) which was marked as Ext. P. 17. The aforesaid statement was recorded in the form of questions and answers. From the nature of the answers the deceased has given, it cannot be said that she has not understood the questions and has not given proper answers. Therefore, it is not difficult to conclude that the mental capacity of the deceased was sound and she was capable of giving answers to the questions put forth by PW-17. 30. The aforesaid dying declaration was recorded by PW- 17 in the presence of PW-18 who is a doctor attached to the same hospital. He has categorically stated in his evidence that the doctor had given the certificate to the effect that the injured was in a position to give the declaration. P.W 18 also signed Ext. P. 17 (Dying Declaration). The thumb impression of the deceased Shoba was also taken on Ext. P. 17. The doctor (PW-18) who was present at the time of recording the dying declaration has also attached a certificate to the effect that the said dying declaration was recorded in his presence. " viii. AIR 2002 SC 2973 (*Laxman v. State of Maharashtra*) " 3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and

when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. " ix. AIR 2016 SC 3218 (State of Gujarat v. Jayrajbhai Punjabhai Varu) " 10) The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye

to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. In the case on hand, there are two sets of evidence, one is the statement/declaration made before the police officer and the Executive Magistrate and the other is the oral dying declaration made by the deceased before her father who was examined as PW-1. On a careful scrutiny of the materials on record, it cannot be said that these were contradictions in the statements made before the police officer and the Executive Magistrate as to the role of the respondent herein in the commission of the offence and in such circumstances, one set of evidence which is more consistent and reliable, which in the present case being one in favour of the respondent herein, requires to be accepted and conviction could not be placed on the sole testimony of PW-1. A number of times the relatives influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the court must remain alive to all the attendant circumstances at the time when the dying declaration comes into being. In case of more than one dying declaration, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocent dying declarations have to be rejected. Such a trend will be extremely dangerous. However, the courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests. 11)..... 12) On appreciation of evidence on record, we are of the considered view that the dying declarations of the deceased recorded by the police officer as well as the Executive Magistrate are fully corroborated and there is no inconsistency as regards the role of the respondent herein in the commission of offence. From a perusal of the statement recorded by Bhiku Karsanbhai, P.S.O., the thumb impression of Rekbaben (since deceased) which had been identified by her father-Sri Vala Jaskubhai Suragbhai as also his cross-examination in which he admitted that police had already come there and he had identified her thumb impression and Mamlatdar had gone inside to record statement, there is no reason as to why Rekbaben would give names of her husband and her in-laws in the alleged statement given to her father. A dying declaration is entitled to great weight. The conviction basing reliance upon the oral dying declaration made to the father of the deceased is not reliable and such a declaration can be a result of afterthought. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It

cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence ". 14. As already been stated, the prosecution placed reliance on the statement given by the deceased Laxmi as per Ex.P29, so also the dying declaration at Ex.P15 recorded by PW11 being the Taluka Executive Magistrate, in the presence of PW19 doctor who has given endorsement stating that the injured was in a befit mental condition to give her statement as the injured had sustained burn injuries of 85-90%. PW18 being the doctor who has also examined the injured and issued certificate as per Ex.P24(a) that the injured was in a befit condition to give her statement at 10.30 am and does not know who recorded the dying declaration but it may be by the Taluka Executive Magistrate. At the bottom of the dying declaration too she made such certificate as per Ex.P15(a) in her hand writing and both certifications are issued only after examination of injured Laxmi. 15. In the instant case, as the prosecution has placed much reliance on the dying declaration at Ex.P15, which is recorded by PW11 being Taluka Executive Magistrate, which is recorded by him in the presence of PW19 being the doctor who has given endorsement stating that injured Laxmi was in a befit physical as well as mental condition to give her statement as she had sustained 85-90% bum injuries. PW18 being the doctor had issued certificate as per Ex.P24(a) stating that the injured was in a befit mental condition to give her statement. It is necessary" for the prosecution to prove the dying declaration being genuine, true and free from all issues insofar as Ex.P15 - dying declaration given by the deceased Laxmi and so also Ex.P29 - complaint given by the deceased herself. The prosecution has placed much reliance on these exhibits P15 and P29 to prove the guilt against the accused. The certificate appended at exhibit P24(a) is in the handwriting of PW18 and both certificates are issued only after examining Laxmi who sustained bum injuries. The certificate reveals that the injured Laxmi was in a fit state of mind at the time of recording the dying declaration. The main question is as to whether the injured was conscious and was in a fit mental condition to make her statement at Ex.P29 as well as the dying declaration at Ex.P15. These two vital documents were placed by the prosecution to prove the guilt against the accused as the accused is none other than the husband of the deceased who poured kerosene over her person and set her ablaze. As a result of that, she sustained burning injuries of 85-90%. On the basis of the facts elicited from the declarant Laxmi, who sustained burning injuries, she gave her statement at Ex.P15 - dying declaration, which is a vital document for the prosecution. The Taluka Executive Magistrate recorded the dying declaration of the deceased Laxmi in the presence of PW19 being a doctor, who has given endorsement stating that the injured Laxmi was in a befit mental condition to give her statement and how she sustained burning injuries in the hands of her husband being the accused No. 1 who poured kerosene over her person and set her ablaze. In the light of the reliance placed by the learned Audi. State Public Prosecutor for the State, insofar as placing much reliance on Ex.P15 - dying declaration given by the deceased and so also she had given statement as per Ex.P29, the entire case of the

prosecution revolved round on these two vital documents. In the present case on hand, we have not come across any serious faults in the investigation done by the Investigating Officer, wherein he had led charge sheet against the accused and that charge sheet consists these vital documents at Ex.P15 - dying declaration which is recorded by the Taluka Executive Magistrate and so also the statement given by deceased Laxmi as per Ex.P29. We are satisfied that the prosecution has established all the circumstances by placing the acceptable evidence. We are also satisfied that with complete involvement and assistance accused No. 1 alone could have poured kerosene over her person and set her ablaze, as a result of that she sustained burn injuries and succumbed to the injuries. The dying declaration at Ex.P15 which was recorded by the Taluka Executive Magistrate is in the presence of the doctor who had issued certificate to the effect that the injured Laxmi was in a befit mental condition to make her statement. In the normal course such an opinion should be accepted and acted upon by the Court to assess the entire evidence of the prosecution as placed and also much reliance on the dying declaration which is given by the declarant who is about to die. 16. Therefore, for the aforesaid reasons, we are of the view that the contentions which are taken by the learned counsel for the appellant in the instant case that there are discrepancies in Ex.P15 -dying declaration given by the declarant and the statement at Ex.P29 given by her cannot be accepted, as the prosecution had proved the guilt against the accused beyond all reasonable doubt by placing much reliance on Ex.P15 of the dying declaration as well as the statement given by the deceased Laxmi which is at Ex.P29. The trial Judge have to be extremely careful in regarding to dealt with the facts at Ex.P15 - dying declaration as well as the fulcrum of Ex.P29 -statement given by the deceased Laxmi. As the maker of the statement is not available for the cross-examination, the maker has given a statement at Ex.P15 in this instant case and this statement is recorded by the Taluka Executive Magistrate in the presence of the doctor. The doctor who issued certificate stating that the maker of the statement Laxmi was in a befit mental condition to give her statement. These evidences were analysed by the learned Sessions Judge and rightly come to the conclusion that the prosecution has proved the guilt against the accused beyond all reasonable doubt that the appellant/accused No. 1 who is none other than the husband of the deceased who caused her death by sustaining burning injuries over her person as indicated in the postmortem report at Ex.21. 17. The learned Sessions Judge has analysed the entire evidence of the prosecution put forth to prove the guilt against the accused Shankrayya who is none other than the husband of the deceased and who poured kerosene over her person and lit the fire by scratching match stick, as a result of which she sustained burn injuries and succumbed to injuries. 18. Regarding the reliance placed by the learned counsel for the appellant, in this case dying declaration at Ex.P15 is recorded by PW11 being a Taluka Executive Magistrate in the presence of PW18, doctor regarding the burning injury sustained by the deceased Laxmi. The rule of caution and prudence is always to be looked into insofar as dying declaration recorded by the concerned Taluka Executive Magistrate in the presence of the doctor of the hospital where the

injured was under treatment. Whether the patient was in a befit mental condition while recording the statement requires to be looked into. In this case, while recording the dying declaration at Ex.P15, the injured was in a befit mental as well as physical condition to give her statement regarding sustaining of burn injuries by pouring kerosene over her person and setting her ablaze by her husband. Therefore, the contention as taken by the counsel for the appellant in this appeal as stated supra cannot be accepted. 19. For the aforesaid reasons, we are of the opinion that there are no acceptable grounds to call for interference in the impugned judgment of conviction and sentence held against the accused No. 1 - Shankrayya under Sections 498(A) and 302 read with Section 34 of the Indian Penal Code, for which he is charged. We are of the opinion that the learned Session has analysed the evidence of the prosecution in its entirety keeping in view of the last seen theory as well as the narration in the complaint at Ex.P29 which is given by the deceased Laxmi and so also the dying declaration at Ex.P15 recorded by the Taluka Executive Magistrate that she has sustained burn injuries over her person in the hands of her husband accused No. 1 - Shankrayya by pouring kerosene over her person and setting her ablaze by scratching the match stick. 20. Therefore, we are of the considered opinion that the appeal deserves to be dismissed. Accordingly, we proceed to pass the following order: ORDER Appeal is hereby dismissed. Consequently, the judgment of conviction and sentence passed by the V Addl. Sessions Judge, Belgaum in S.C. No. 36 of 2000 dated 02.04.2012 is hereby confirmed.