

(2020) 01 BOM CK 0041
In the Bombay High Court
Case No : Criminal Appeal No. 377 Of 2000

State Of Maharashtra

APPELLANT

Vs

Umesh Digambar Jadhav

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 01 BOM CK 0041

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : V.B. Konde Deshmukh, Ashish Satpute

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. The Appellant-State has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.215 of 1999 thereby acquitting the Respondent - Accused for the offence punishable under Section 302 of the Indian Penal Code (for short "IPC).

2. The Respondent - Accused was the under-trial prisoner and in the custody of Magistrate in respect of the offence punishable under Section 302 of the IPC on the allegation that at about 6-30 am on 09/08/1999 at Plot No.273 of Swami Vivekanand Nagar, hatture Vasti, Solapur the Accused intentionally committed murder of his wife Meenakshi by pouring kerosene on her body and setting her on fire knowing it well that on account of pouring kerosene oil and setting her on fire, Meenakshi was likely to succumb death on account of setting her ablaze, and therefore, according to the prosecution the accused committed offence under Section 302 of the IPC. There is dying declaration (Exhibit 24) given by deceased Meenakshi in Civil Hospital Solapur when she was on verge of her death and, the said dying declaration has been treated as FIR by the prosecution while

registering Crime bearing No.82/99 initially under Section 307 of IPC and subsequently converted into the offence punishable under Section 302 of IPC on account of death of Meenakshi Jadhav. According to the prosecution, in her dying declaration Meenakshi has narrated about the quarrel in between her and her husband Umesh Jadhav i.e. the Respondent - Accused in the night of 08/08/1999 and 09/08/1999. According to the prosecution, on account of the said quarrel, the Respondent - Accused under the influence of liquor committed the alleged offence for which the Accused has been charged.

3. After registration of offence, it appears that, the matter was investigated by PSI Lokhande (PW-4), who during the course of investigation recorded the statements of witnesses, visited the spot of incident, recovered one kerosene tin and match box and hairs of deceased from the spot of incident as also prepared panchanamas including scene of offence as also collected Post-Mortem Notes. The IO thereafter arrested the Respondent - Accused on 11/08/1999. After completing the investigation, a charge-sheet came to be filed against the Respondent - Accused. The learned Additional Sessions Judge, Solapur thereafter framed charge against the Respondent - Accused for committing offence under Section 302 of the IPC.

4. Thereafter the charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. To bring home the guilt of the accused, during the trial the prosecution has examined in all four witnesses in support of its case, including PSI Lokhande (PW-4). The Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Additional Sessions Judge, after considering the evidence on record and, the document (Exhibit 24), which according to the prosecution is the dying declaration, came to a conclusion that the said dying declaration is a weak piece of evidence and unless it is strongly corroborated or supported by the ocular theory of the prosecution, it cannot be held to be legal and valid in order to point the guilt of the accused. As stated herein above, the learned Additional Sessions Judge, by giving benefit of doubt to the accused, by the impugned judgment and order, acquitted the Respondent - accused for the offences punishable under Section 302 of the IPC. Hence this Criminal Appeal filed by the State against the said order of acquittal.

5. We have heard the learned APP for the Appellant - State and the learned counsel for the Respondents - Accused. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the documents produced on record, and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

6. It is submitted by the learned APP that the learned Additional Sessions Judge has erred in acquitting the accused and not taking into consideration the material on record, and in discarding the evidence led on behalf of the prosecution. He submits that the learned Additional Sessions Judge has not applied his mind in appreciating the oral as well as documentary evidence on record. The learned

APP further submits that the prosecution has proved the seizure of one Kerosene can and match box and match sticks through the evidence of PW-1 Sanjay Bayas - the Panch. He further submits that the fact that on 08/08/1999 there was a quarrel between the accused and his wife and it continued till early in the morning on 09/08/1999 has been proved by the prosecution through the evidence of PW-2 Suman Sahadev Salunkhe. He therefore submits that the evidence of PW-2 has been wrongly disbelieved by the trial Court. It is submitted that there is an eye witness to the incident in question i.e. PW-3 Manisha Umesh Jadhav, who is the daughter of deceased Meenakshi and accused Umesh Jadhav. It is also submitted that PW-3 witnessed the entire incident and she is the most natural witness to be present in the house at the time of occurrence of incident. The learned APP therefore submits that the trial court has committed an error in disbelieving her evidence. The learned APP further submitted that the IO - PSI Lokhande (PW-4). has recorded the dying declaration of deceased with all care and caution and the said dying declaration was certified by the doctor. According to the learned APP, the said dying declaration (Exhibit 24) is the important piece of evidence through which it is revealed that the accused started quarrel with deceased Meenakshi and then he poured kerosene on the person of deceased and ignited the match stick and burned her. The learned APP submits that in the said dying the deceased made a grievance against her husband i.e. the accused. It is submitted that the said dying declaration is corroborated by PW-2 and PW-3 as also corroborated by the circumstantial piece of evidence which was not challenged by the defence. He, therefore, submits that the trial Court has completely ignored the said dying declaration (Exhibit-24) which was treated as FIR, on a wrong footing. The learned APP therefore submits that, the impugned judgment and order passed by the learned Additional Sessions Judge in Sessions Case No.215/1999 acquitting the Respondent - Accused from the offence punishable under Section 302 of the IPC is erroneous and is liable to be quashed and set aside. He further submits that the Appeal filed by the Appellant/State against the said acquittal may be allowed.

7. The learned counsel, who has been appointed as amicus curiae, to represent the Respondent - Accused submits that, the prosecution has failed to bring home the guilt of the accused. It is also submitted that the dying declaration (Exhibit 24), on which reliance was placed by the prosecution, is not corroborated by the cogent and sufficient evidence, and therefore, the trial Court has rightly refused to take into consideration the said dying declaration. He further submits that the Respondent - Accused has been falsely implicated in the commission of alleged offence at the instance of relative of deceased Meenakshi. According to him, because on the date of incident, Meenakshi succumbed to death on account of blasting of burning stove when she was preparing meals at about morning time, the Respondent - Accused has been falsely implicated in the alleged offence. He further submitted that at that time the Respondent - Accused tried to save deceased Meenakshi by helping her and by covering her body with the help of Solapur Chaddar and at that time his both palms of hands were burnt. The

learned counsel for Respondent - Accused further submits that the Respondent - Accused cannot be convicted on the basis of the said dying declaration which is not corroborated by the sufficient evidence. The learned counsel for the Respondents - Accused submits that the learned Additional Sessions Judge after considering the evidence and material on record has rightly acquitted the accused. In support of the said contentions, the learned counsel for the Respondent - Accused sought to place reliance on the judgment of the Hon'ble Supreme Court in the case of Samadhan Dhudaka Koli v/s. State of Maharashtra (2008) 16 scc 705 and judgment of this Court in the case of Rasul Suleman Mulla (dead) and others v/s. The State of Maharashtra (Criminal Appeal No.1214 of 2005 decided on 02/09/2014). He lastly submits that the impugned order passed by the learned Additional Sessions Judge is well reasoned order and needs no interference at the hands of this Court. He therefore submits that the Appeal filed by the State may be dismissed.

8 We have gone through the entire record and proceedings of the Trial Court. In order to prove the guilt of the accused, the prosecution has examined four witnesses. According to the prosecution, the document (Exhibit 24). is the dying declaration of deceased Meenakshi, and the said dying declaration is sufficient to prove the guilt of the accused because in the said dying declaration the deceased Meenakshi has stated that the accused was responsible in causing burn injuries to her by pouring kerosene on her person. At this juncture, it is necessary to mention that the whole prosecution case is based on the dying declaration (Exhibit 24) given by the deceased in Civil Hospital when she was at the verge of death. According to the prosecution, the said dying declaration is corroborated by the evidence of PW-2 and PW-3.

9. Firstly we will deal with the oral evidence adduced by the prosecution during trial.

The prosecution has examined PW-1 Sanjay Gulabsingh Bayas as a pcrnah witness on scene of offence. He stated that the house of Umesh Jadhav consists of one room having bathroom facility in it. There is a flooring of shahabad pharse (tile). One rockel tin was seen along with match box. There was small quantity of kerosene having sky colour. He further stated that the container of the rockel was kept in a proper condition and the match box was having some match sticks in it and the match box was smelling kerosene. According to this witness, the said rockel tin was closed with the help of lid. He also stated that loose hair were also spread over on the floor and they were in burnt condition. He further stated that there were sprinkling of kerosene oil on the floor as well as on the wall.

In his cross examination, PW-1 admitted that police pointed out the house of the accused and, his house is adjacent to the house of accused i.e. the place of incident. He further admitted that it did not happen so that the place of incident was shown by accused Umesh Jadhav. He further admitted that the accused Umesh was not present when the document vide Exh.16 was reduced in writing. He admitted that there is no reference of sprinkling of rockel or kerosene oil on

the wall. He further admitted that the articles used for daily use were stored very near to each other because the house is very small belonging to the accused.

Perusal of the panchanama (Exh.16) and the evidence of PW-1 would reveal that the house of accused is consisting of one room. According to PW-1, kerosene oil was sprinkled on the floor as well as on the wall. Assuming that if the case of the prosecution that, the accused poured kerosene contained in the can on the person of deceased Meenakshi is accepted, naturally the entire one room house would have got fire on account of sprinkling of kerosene on the floor and wall. However, according to PW-1 there was no damage to any other articles used for daily use were stored very near to each others. Therefore in our considered view, the panchanama and the evidence of PW-1 appear to be doubtful.

The second witness is Suman Sahadeo Salunkhe (PW-2). She stated that there was quarrel in between accused and victim as he was addicted to liquor. She further stated that she had witnessed that deceased wife of accused was driven out and there were quarrels in between them, and he used to beat her, he suspected character of deceased and used to prohibit her from attending the labour work. She stated that she was told by prosecution witness Nanda regarding the quarrel in between accused and his wife Meenakshi. She came to know only about quarrel and nothing else. She also came to know that there was beating to deceased Meenakshi at the hands of the accused. On 9th of August 1999 in the morning at about 6 am the prosecution witness Manisha was shouting for rickshaw and at that time PW-2 was doing pooja in the temple. On hearing hue and cry of Manisha PW-2 immediately came out from the temple and inquired with her what was the reason why she was shouting, at that time she disclosed that her father poured the kerosene oil on the person of her mother and she was set on fire. PW-2 stated that immediately she rushed to the place of incident. She further stated that the accused was present there. PW-2 stated that deceased told her that accused set her on fire by pouring kerosene oil. Thereafter rickshaw was brought by the brother of the accused and the deceased Meenakshi was kept in that rickshaw along with her saree and the accused was also directed to sit in the said rickshaw. At that time deceased Meenakshi told her that accused was pressing her neck when he was besides her in auto rickshaw. PW-2 further stated that thereafter in place of accused his brother was directed to sit beside Meenakshi. PW-2 stated that thereafter deceased was taken to Civil Hospital Solapur along with accused and his brother and, on 10th of August 1999 she expired.

In her cross examination, PW-2 admitted that she did not pay visit to Civil Hospital Solapur on the date of the incident and she never visited the Civil Hospital in order to know the physical condition of Meenakshi. She stated in her cross that she does not know whether police attended place of incident. She further stated that the police recorded her statement on the next day of the incident. PW-2 admitted in her cross examination that she told the police that Meenakshi was on visiting terms to her house, but other things which she has

already stated in examination in chief were not disclosed to the police, and it is an omission.

It appears from the evidence of PW-2 that she is a witness to the alleged incident. According to PW-2, she was busy in performing Pooja when PW-3 Manisha met her. This witness (PW-2) denied visit to the Civil Hospital on the date of incident. She has specifically stated in her evidence that she told the police that Meenakshi was on visiting terms to her house, but other things which she had already stated were not disclosed to the police at the time of recording her statement by police. Therefore, it appears that there are improvements and omissions in her deposition. Her evidence reveals that she has developed the story of prosecution at the time of recording of evidence before the Court. Therefore, evidence of PW-2 cannot be relied upon. The prosecution has tried to project PW-2 as an eye witness. But considering her evidence, it cannot be said that she is a trustworthy witness.

The next witness examined by the prosecution is PW-3 Manisha Umesh Jadhav who is the daughter of deceased Meenakshi and accused Umesh Jadhav. According to the Prosecution PW-3 is an eye witness to the incident in question. She stated that her father was doing the work as mason, he used to attend the house at about 8 to 9 pm and at that time he was under the influence of liquor, he used to quarrel with her mother and used to beat her mother. She stated that she used to intervene in matter but it was of no use. She stated that her mother expired on account of burning and she died on 9th August 1999. She stated that on 8th of August 99 they had been to the house of her uncle in order to see the male child newly born in the house of her uncle. She further stated that they came to their house at 7.30 pm. Her father was already present in the house. He was under the influence of liquor and he inquired with her mother where she was for such a long time. She further stated that thereafter her father started abusing her mother in a filthy language, and directed her mother to leave the house. She stated that in this way the quarrel was continued. Thereafter her mother prepared meal, they took dinner and went to bed. PW-3 stated that in the morning she got up on account of hue and cry in between her mother and father. Thereafter the accused in an angry mood took out the can containing rockel which was kept below the Devara and poured kerosene on the body of her mother and set her on fire. PW-3 stated that she witnessed the abovesaid incident and requested her father not to do such act, but he threatened her that he would also burn her in the same manner. She further stated that third match stick was thrown on the person of her mother, her mother started hue and cry on account of burning. PW-3 also raised hue and cry at that time. Thereafter as per directions of her uncle she came out from the house in order to hire the auto rickshaw, at that time she met and came across one Salunkhe Kaku. She inquired with PW-2, and PW-2 told her that her mother was set on fire. Her uncle also searched for auto rickshaw and he brought the auto rickshaw. Thereafter her mother was taken to the Civil Hospital Solapur. She stated that her uncle was with her mother and father in auto rickshaw. Thereafter she went to the house of

her uncle Avinash. On the next day police inquired with her and recorded her statement.

In the cross examination of PW-3, name of her maternal aunt is Shakuntala, she resides in Mhada Colony. She stated that her uncle Avinash resides in Solapur City. She stated that she told the above said facts to her uncle and his wife. She stated that Suhas is maternal uncle. She further stated that she had not been to the hospital when her mother was admitted and, at about 6 to 6.30 pm she had been to the hospital and at that time her mother expired. She stated that, she told the police regarding burning of sarees of her mother as stated in examination in chief, but she cannot tell any reason why it is not appearing in her statement before the police. She stated that she does not know whether both the hands of her father were burnt or not. She admitted that now she is with her uncles vz. Suhas Mamka and Hari Mama since the death of her mother. She also admitted that police recorded her statement in the house of Suhas mama.

Perusal of the evidence of PW-3 Manisha would reveal that there are contradictions in her deposition. She deposed that as per directions of her uncle she came out from the house in order to hire the auto rickshaw and at that time she met and came across one Salunkhe Kaku (PW-2) and she told her that her mother was set on fire. However, this portion did not find place in her statement before police. She also stated in her evidence that after her mother was taken to civil hospital, she went to the house of uncle Avinash, who is the husband of her sister, and on the next date police recorded her statement in the presence of her Suhas Mama, who is her maternal uncle. Perusal of the evidence of this witness (PW-3) and her statement before police would reveal that there are contradictions, omissions and improvements in her evidence. Therefore there is possibility of tutoring this witness by the relatives of deceased Meenakshi to depose against the accused.

The next witness is PW-4 the Investigating Officer PSI Abhimanyu Kisan Lokhande. He stated that on 09/08/1999 he received the information regarding the burnt injuries on the person of deceased Meenakshi Umesh Jadhav. He informed the Executive Magistrate to record the dying declaration of the deceased. Executive Magistrate recorded the dying declaration of the deceased. He stated that he personally visited the premises of Civil Hospital Solapur and found that the deceased was admitted in burn ward of Civil Hospital Solapur. He recorded her complaint because she had complained against her husband. The said complaint is at Exhibit 22. He stated that he took the investigation of this crime in his hand and carried out the investigation.

In his cross examination the IO (PW-4) stated that he received the papers of investigation and he started actual investigation in this matter on 10/08/1999 after 7 pm, he has not filed the copy of MLC register and Station Diary Entry dated 09/08/1999 i.e. the date on which incident took place. He stated that the copy of dying declaration of deceased dated 09/08/1999 is not enclosed along with the charge-sheet. He admitted that these two omissions are reflected in the

statements of PW 2 Suman Sahadeo Salunkhe. He further admitted that there is omission regarding burning of sarees of deceased by taking out from the box, and this omission was not stated before him by PW 3 Manisha while recording her statement. He also stated that Manisha did not disclose him that accused threatened her that he would burn her like that of her mother and this is improvement in the evidence before the Court. He also stated that she did not disclose him that prior to her statement before me she had disclosed the incident to prosecution witness PW 2 Mrs. Salunkhe Suman, and she also did not disclose that she had been to house of her uncle Avinash after the incident. PW-4 also admitted that there is no arrest panchanama in the file dated 11/08/1999 of the accused. He further admitted that he noticed the burn injuries on the palms of accused and those were fresh. PW-4 further admitted that Harishchandra Dhamdhare is working in the Military and is officer in the Military Department. He denied that at the request of Military Officer Dhamdhare he has filed this false case against the accused by recording the statement of Manisha on 10/08/1999. He stated that he did not collect the necessary medical papers and line of treatment to deceased Meenakshi when she was in Civil Hospital Solapur.

Through the cross examination of IO PSI Lokhande (PW-4) the defence has brought on record the contradictions, omissions and improvements in the evidence of PW-2 Suman Salunkhe and PW-3 Manisha Jadhav who are the star witnesses of the prosecution. PW-4 has categorically stated that he informed the matter to the executive magistrate to record the dying declaration of the deceased and the executive magistrate recorded the dying declaration of the deceased. He further stated that he recorded the complainant of deceased Meenakshi because she had complained against her husband. However in his cross examination he admitted that the copy of the dying declaration of deceased dated 09/08/1999 is not enclosed along with the charge-sheet. It appears that the prosecution has not brought on record the first dying declaration, a reference of which is made by the deceased Meenakshi in her dying declaration dated 10/08/1989. He further admitted that he noticed the injuries of burns on the palm of the accused and those injuries were fresh. Therefore it cannot be said that the oral evidence of the prosecution witnesses adduced by the prosecution is reliable and trustworthy evidence so as to convict the accused.

10. Now coming to the dying declaration (Exhibit 24). Perusal of the said dying declaration shows that it was recorded by PSI, Police Station Solapur on 10/08/1999. In the said dying declaration the deceased has stated that because of quarrel between her and her husband, her husband poured kerosene on her person and set her on fire and therefore she was burnt. In the next paragraph of the said dying declaration dated 10/08/1999, deceased Meenakshi made a reference of the earlier dying declaration wherein she has stated that because of blasting of burning stove she was burnt. As stated herein above, during the course of investigation, though IO has informed the executive magistrate to record the statement of deceased Meenakshi, who, according to the IO, recorded her statement on 09/08/1999, the IO did not take any pains to search the earlier

dying declaration recorded by executive magistrate in order to compare the same for the purpose of ascertaining real truth behind the alleged incident, and there is no explanation tendered by the prosecution for suppression of the said dying declaration dated 09/08/1999.

11. As stated herein above, the IO did not bring on record dying declaration dated 09/08/1999 recorded by executive magistrate. There is no cogent and plausible explanation tendered by the prosecution for suppression of dying declaration dated 09/08/1999. Suppression of dying declaration dated 09/08/1999 by the prosecution itself is fatal to the story of the prosecution that it was the accused who is the culprit behind the alleged incident. Therefore, suppression of dying declaration dated 09/08/1999 from court itself is sufficient to draw inference that the prosecution has not acted fairly and tried to suppress the genesis of the alleged incident.

12. One more aspect which requires consideration is that in this matter medical officer has not been examined in whose presence alleged dying declaration (Exh.24) of Meenakshi was recorded. Secondly case papers of Meenakshi from 09/08/1999 to 10/08/1999 were not produced before the Court, and there is no explanation given by the prosecution as regards non-production of case papers. The percentage of burn injuries received by the deceased as shown in the Post Mortem Report is 43% on the different parts of deceased Meenakshi, and the cause of death shown is "Septicaemia due to burns". The prosecution has not examined the medical officer who performed the post mortem of deceased Meenakshi to prove the burn injuries sustained by the deceased.

13. According to defence, the accused tried to save deceased Meenakshi by covering her body with the help of solapur chaddar and at that time both palms of his hands were burnt. PW-5 PSI Lokhande admitted in his evidence that he noticed the injuries of burns on both palms of the hands of accused and those injuries were fresh. If it is admitted by PSI Lokhande that he noticed the injuries on the palms of the accused, for the reasons best known to him, why IO did not refer the accused to the hospital for his treatment. There is no explanation given by prosecution as to why accused was not referred to medical officer for his treatment in respect of injury shown at Exhibit 25. It has been specifically mentioned at Sr.Nos.22 and 23 in Exhibit 25, which is the description of the accused at the time of arrest, that there were fresh marks of injuries on the palms of hands. The prosecution has failed to explain the injuries received by the accused, as also for the reasons best know to him, the IO did not refer the accused for treatment. It is a settled law that if the injuries are found on the person of accused during the course of investigation, the said injuries must be explained by the prosecution. In such circumstances, an inference could be drawn that the accused himself tried to save the life of deceased Meenakshi when she was burning and at that time he might have received the burn injuries to the palms of his hands. Moreover the IO PSI Lokhande (PW-4) did not collect the necessary medical papers and line of treatment to deceased Meenakshi when

she was in civil hospital. The IO has not given any cogent reason for not collecting necessary medical papers.

14. It is required to be noted that the death of Meenakshi has not been challenged by the accused, however, the prosecution has failed to examine concerned Medical Officer who examined Meenakshi and gave an endorsement on dying declaration. Question remains that whether the accused is the author of the injuries sustained by deceased Meenakshi. There is no sufficient evidence brought on record by the prosecution to hold that, the accused had an intention to commit murder of his wife by pouring kerosene on her body.

15. In so far as Chemical Analyzer report is concerned, as rightly held by the Trial Court that, it cannot be independently read as it is a corroborative piece of evidence, and can be taken into consideration after proving the ocular theory of the prosecution case against the accused. In our considered view that the prosecution has deliberately suppressed the first dying declaration recorded by the executive magistrate, and therefore, no reliance can be placed on the dying declaration (Exhibit 24) recorded by the Investigating Officer. An adverse inference, therefore, certainly can be drawn against the prosecution for having suppressed the dying declaration that, if the said dying declaration dated 09/08/1999 recorded by the executive magistrate would have been tendered in evidence by the prosecution, certainly the same would have completely destroyed the prosecution case.

16. Now coming to the judgments cited (supra) by the learned counsel for the Respondent - Accused in support of his contention that in the absence first dying declaration recorded by the executive magistrate, the accused cannot be convicted on the basis of second dying declaration (Exh.24) recorded by the Investigating Officer which is not corroborated by sufficient evidence. The facts in Samadhan Koli's case before the Supreme Court were that on or about 4-9-1991 deceased Janabai gave a dying declaration before a police constable Savda. The said dying declaration was marked as Exhibit 48. There was another dying declaration recorded by a Judicial Magistrate on the same day. The said dying declaration, however, for reasons best known to the State was not produced on record.. On or about 6-9-1991 another dying declaration of the deceased was recorded by Police Head Constable, Uttam Sonawane while she was undergoing treatment at Municipal Hospital at Bhusawal.. In the aforesaid fact situation the Hon'ble Supreme Court in paragraphs 12, 16 and 18 of the judgment has observed as under:-

12. A dying declaration made before a Judicial Magistrate has a higher evidentiary value. The Judicial Magistrate is presumed to know how to record a dying declaration. He is a neutral person. Why the prosecution had suppressed the dying declaration recorded by the Judicial Magistrate is not known. Prosecution must also be fair to the accused. Fairness in investigation as also trial is a human right of an accused. The State cannot suppress any vital document from the court only because the same would support the case of the

accused.

16. A judgment of conviction can be recorded on the basis of a dying declaration alone, but the court must have been satisfied that the same was true and voluntary. Indisputably, for ascertaining the truth as regards the voluntariness of making such a dying declaration, the court is entitled to look into the other circumstances but the converse may not be true.

18. Consistency in the dying declaration, therefore, is a very relevant factor. Such a relevant factor cannot be ignored. When a contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they should not be accepted on their face value. In any event, as a rule of prudence, corroboration must be sought from other evidence brought on record.

In Rasul Suleman Mulla's case (supra) this Court has held in paragraphs 11 and 12 thus:-

11. In the present case also we find that in the dying declaration at Exh. 55, deceased Mukhtyar Begum had alleged that all the accused had participated in pouring kerosene and setting her ablaze. In the dying declaration made by Mukhtyar Begum to the Medical Officer, she has only attributed the overt act to accused no.1 and accused no. 4. A different overt act is attributed to accused no.4 in the dying declaration at Exh. 55. Thus, acceptance of any one dying declaration necessarily proves the other dying declaration as false. It would, therefore, not be permissible for the court to pick and choose any one dying declaration for sustaining the conviction of the appellants. Coupled with this, as pointed out by us above, the prosecution has deliberately withheld the dying declaration recorded by PW 17 - PI Deshpande in the evening of 24/2/2005. For the aforesaid reasons, therefore, according to us, no reliance can be placed on the dying declarations referred to above.

12. Prosecution has examined PW 11 - Jaitunbi, sister of deceased Mukhtyar Begum and PW 12 - Mahamad Ali, brother of deceased Mukhtyar Begum, who claimed that oral dying declaration had been made by deceased Mukhtyar Begum to them. PW 11 - Jaitunbi deposes that on being informed that Mukhtyar Begum had sustained burns, she accompanied by her mother, rushed to the I.G.M. Hospital at Ichalkaranji and on being questioned, Mukhtyar Begum had told Jaitunbi and her mother that on account of dispute of partition, the accused had assaulted her and injured her by setting her ablaze after pouring kerosene on her. PW12 - Mahamad Ali, brother of deceased Mukhtyar Begum states that he had learnt that Mukhtyar Begum had sustained burns and, therefore, had gone to the hospital and Mukhtyar Begum had disclosed to him that the accused had quarreled with her and abused her and assaulted her and thereafter sether ablaze after pouring kerosene on her. In both the oral dying declarations deceased Mukhtyar Begum had alleged that all the accused had poured kerosene and had set her ablaze. In the dying declaration at Exh. 55 different overt acts were attributed to each accused and accused no.1 alone was attributed the overt

act of setting Mukhtyar Begum ablaze. Apart from it, the said dying declaration is extremely vague and is inconsistent with the recitals of the dying declaration at Exh. 55. In our opinion, therefore, no reliance at all can be placed on the oral dying declarations made by deceased Mukhtyar Begum to PW 11 - Jaitunbi and PW 12 - Mahamad Ali. Even the evidence of PW 10 - Iqubal, husband of deceased Mukhtyar Begum does not support the prosecution as PW 10 - Iqubal claims that Mukhtyar Begum did not know to speak Marathi. PW 10 - Iqubal was declared hostile by the prosecution and was cross-examination."

17. In the light of aforesaid discussion, we are of the considered view that the view taken by the learned Additional Sessions Judge is a plausible view. The impugned judgment and order passed by the learned Additional Sessions Judge is proper and legal. There is no perversity in the impugned judgment and order. At this juncture it is important to note that, even though another view is possible, that cannot be a ground to interfere with the impugned judgment and order of acquittal. Hence we pass the following order:-

ORDER

1]. The Appeal stands dismissed.

2]. Bail bonds, if any, shall stand cancelled.

3] We appreciate the sincere efforts taken by the learned counsel Mr. Ashish Satpute appointed for the Respondents who has rendered able assistance to this Court during the course of hearing of the Appeal. We, therefore, quantify Rs.10,000/- plus the actual expenses borne by him as the fee to be paid to learned counsel Mr. Ashish Satpute. The High Court Legal Aid Service Committee is directed to disburse the said fee to learned counsel Mr. Ashish Satpute within one month from today.