

(2018) 04 BOM CK 0178
In the Bombay High Court
Case No : CRIMINAL APPEAL NO.583 OF 2002

THE STATE OF MAHARASHTRA	Vs	APPELLANT
BABAN KISHANRAO BANSODE & ORS S.		RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 498A, 302, 34, 307
Code Of Criminal Procedure, 1973 — Section 313, 428

Citation : (2018) 04 BOM CK 0178

Hon'ble Judges : SUNIL P.DESHMUKH, P.R.BORA

Bench : Division Bench

Advocate : S.J.Salgare, Angad L. Kanade, APP

Final Decision : Allowed

Judgement

P.R.BORA,J.

1.The State has preferred the present appeal against judgment and order passed by Ad hoc Additional Sessions Judge Nanded in Sessions Case

No.92/2001 decided on 26th June, 2002. The Respondents were prosecuted in the aforesaid Sessions Case for the offences punishable under

Sections 498A, 302 read with 34 of IPC. It was alleged that in furtherance of their common intention, respondents knowingly and intentionally, caused

the death of deceased Kranti Baban Bansode by setting her on fire after pouring kerosene on her person.

2.The alleged incident had occurred on 23rd December, 2000 at about 3.00 p.m. at the residential house of the accused situated at Mahatma Phule

Nagar, Bhokar, Tq. Bhokar District Nanded. Deceased Kranti was married with Respondent No.1, about three years prior to the alleged incident.

Respondent Nos.2 and 3 are real brothers of accused No.1. Respondent Nos. 1 to

3 are hereinafter referred to as accused Nos.1 to 3.

3. According to the prosecution, all the three accused were residing in the house situated at Mahatma Phule Nagar. It was the case of the prosecution

that on 23rd December, 2000, deceased Kranti had taken her son by name Vicky to the doctor since he was ill, with the help of a neighbouring boy,

viz. Uttam Sarode. It was alleged that after deceased Kranti returned from the hospital, grievance was raised as about accompaniment of Uttam

Sarode with the prosecutrix while going to the hospital. Some ill intentions were attributed on part of deceased Kranti in that regard by her father

inlaw. Father of deceased Kranti was also stated to have asked accused No.2 to keep watch on the prosecutrix. Accused Nos.1 and 2 had

raised suspicion over the character of deceased Kranti and some altercations had occurred on the issue. Deceased Kranti thereafter cooked the food

and made arrangement for sending Tiffin of accused no.1 and also served meals to accused Nos.2 and 3. Accused No.1 was, however, stated to

have returned from the midday. It was further alleged that Accused No.1 thereafter poured kerosene on person of deceased Kranti and set her on

fire. Accused No.1 was also alleged to have bolted the door of the room from outside. Deceased Kranti engulfed in the flames, broke open the door

and came out. She then was immediately removed to rural hospital at Bhokar. From the said hospital deceased Kranti was referred to Shri Guru

Govind Singhji Memorial Hospital, at Nanded. Deceased Kranti had received extensive burn injuries. While in the hospital, dying declaration of

deceased Kranti was recorded on 24th December, 2000 by JMFC, viz. Shri A.J.Telang. In the declaration given to JMFC Shri Telang, deceased

Kranti implicated the accused persons to have poured kerosene on her person and setting her ablaze. On the basis of the declaration so given by the

prosecutrix, initially an offence under Section 498A and 307 of IPC was registered against the accused persons at Police Station, Bhokar and the

investigation was set in motion. While undergoing treatment at the civil hospital at Nanded, Kranti succumbed to the burn injuries, whereupon the

offence initially registered under Section 307 of IPC was converted into an offence under Section 302 of IPC. The Investigating Officer in usual

course carried out spot panchanama, inquest panchanama and also got done post mortem examination of the dead body of victim Kranti. The

statements of the witnesses were also recorded. The accused were arrested. Some recoveries were also made in pursuance of the memorandum

statements allegedly given by the accused. After completing the investigation, charge sheet was filed in the court of JMFC at Bhokar.

4.The learned JMFC, having regard to the fact that the offence under Section 302 of IPC was exclusively triable by the Court of Sessions, committed

the said case to the Sessions Court. After committal, the learned Sessions Judge framed charge against the accused persons, to which the accused

pleaded not guilty and claimed to be tried.

5.In order to prove guilt of the accused, the prosecution examined as many as 12 witnesses and also relied upon certain documents. The defence of

the accused was of total denial and of false implication. The learned Ad hoc Additional Sessions Judge, after having assessed the oral and documents

evidence brought before him, acquitted all the three accused of the charges leveled against them. Aggrieved by, the State has preferred the present

appeal.

6.Shri Salgare, learned APP appearing for the State, criticized the impugned judgment on various grounds. The learned APP submitted that the

learned Trial Court has rejected the evidence brought on record by the prosecution in the form of dying declaration of deceased Kranti for erroneous

reasons. The learned APP further submitted that the dying declaration at Exh. 33 was recorded by the learned JMFC and before recording the said

statement, the learned Magistrate has also obtained an opinion of the Medical Officer whether deceased Kranti was in a position to give her statement

and only after certification by the concerned medical officer that she was fit to give her statement, the statement was recorded by the learned JMFC.

7.The learned APP further submitted that as has come on record in the evidence of PW 9 Â A.J.Telang Â JMFC that he himself was satisfied that

deceased Kranti was in a position to give her statement and only after ascertaining the said fact that he recorded her statement. The learned APP

further submitted that the learned Magistrate relying upon the judgment of the Hon'ble Apex Court in the case of Paparambaka Rosamma Vs. State

of A.P. Â (1999) 7 SCC 695, has declined to rely upon the dying declaration recorded by PW 9 of deceased Kranti for the reason that there is no

specific certification that deceased Kranti was in a fit state of mind to give her

statement.

8.The learned APP further submitted that in the case of Laxman Vs. State of Maharashtra Â (2002) 6 SCC 710, the Constitution Bench of the

Hon'ble Apex Court has overruled the judgment in the case of Paparambaka Rosamma Vs. State of A.P. (cited supra). The learned APP further

submitted that the Constitution Bench of the Supreme Court has ruled that, what is essentially required is that the person, who records a dying

declaration must be satisfied that 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. The Hon'ble Apex Court has further held that certification by the doctor is essentially rule of caution and, therefore, the

voluntary and truthful nature of the declaration can be established otherwise.

9.The learned APP further submitted that having considered the evidence on record and more particularly the facts, as are revealed from the dying

declaration of deceased Kranti, the prosecution has beyond reasonable doubt proved the guilt of at least accused No.1. The learned APP fairly

submits that in so far as accused Nos. 2 and 3 are concerned, no such evidence has come on record against them so as to hold them guilty for the

homicidal death of deceased Kranti.

10.The learned APP further submitted that as has been stated by deceased Kranti in her dying declaration at Exh. 33, only because deceased Kranti

took the neighbouring boy viz. Uttam along with her, when she had been to the hospital for the treatment of her son, viz. Vicky, her character was

suspected by accused No.1 and that has resulted in pouring kerosene by him on person of deceased Kranti and to set her on fire. The learned APP

further submitted that the dying declaration of deceased Kranti alone is sufficient to prove the complicity of the accused in commission of the alleged

crime. The learned APP, therefore, prayed for setting aside the impugned judgment and order and consequently to hold accused No.1 guilty for

offence under Section 302 of IPC and to adequately punish accused No.1.

11.Learned Counsel appearing for the respondents, while opposing the submissions advanced by learned APP, supported the impugned judgment. The

learned Counsel submitted that there are serious doubts whether deceased

Kranti was in a condition to give her statement on 24th December when it is said to have recorded by PW 9 A.J.Telang. The learned Counsel pointed out that on the earlier day, i.e. on 23rd December, and on the subsequent days, i.e. on 25th, 26th, 27th and up to 28th December, the medical reports show that deceased Kranti was not in a condition to give her statement.

12.The learned Counsel submitted that since deceased Kranti had received the burn injuries to the extent of 98%, she was not in physical and mental condition to give her statement throughout, i.e. since her admission in the hospital till her death. The learned Counsel further submitted that the prosecution has also not examined the medical officer, who is alleged to have certified deceased Kranti to be fit for giving her statement before it was recorded by PW 9 A.J.Telang. The learned Counsel submitted that non-examination of said medical officer also creates doubt about the fitness of deceased Kranti for giving her statement.

13.The learned Counsel further submitted that there were also allegations against the accused persons that they had caused harassment to deceased Kranti on account of some monetary demands. However, the prosecution has failed in bringing on record any cogent evidence in that regard. The learned Counsel submitted that the entire prosecution case was thus based on falsehood and in the circumstances, the learned Sessions Judge has rightly acquitted all the accused from the offences charged against them. The learned Counsel further submitted that even in respect of the truthfulness of the facts allegedly stated by deceased Kranti in her statement at Exh. 33, there are serious doubts. The learned Counsel pointed out that though accused No.3 was not even present at the relevant time, deceased Kranti had also tried to implicate his name in the alleged dying declaration. The learned Counsel further submitted that similarly, though there was no role played by accused No.2, his name has also been implicated in the alleged dying declaration of deceased Kranti, which also creates doubts about the veracity of the said dying declaration.

14.The learned counsel further submitted that there are several lacunae, which are pointed out by the learned Trial Court as about attestation of the thumb impression; not obtaining left hand thumb impression etc. The learned Counsel further submitted that the evidence of PW 4 Chandrakala,

who is an independent witness, also clearly indicates non-involvement of the accused persons in the alleged incident. In the circumstances, according to the learned Counsel, the learned Sessions Judge has rightly acquitted the accused persons and no interference is required in the well-reasoned order so passed by the learned Additional Sessions Judge. The learned Counsel, therefore, prayed for dismissal of the appeal.

15. We have given due consideration to the submissions made by the learned APP appearing for the appellant State and the learned counsel

appearing for the respondents. We have also perused the impugned judgment and the entire evidence on record. It is not in dispute that deceased

Kranti died on 28.12.2000 as a result of the burn injuries caused to her. PW 1 â Dr. Ramesh Waghmare had conducted the post-mortem

examination on the dead body of Kranti. As was deposed by Dr. Waghmare, deceased Kranti had received the burn injuries to the extent of 98%. As

opined by Dr. Waghmare, death of deceased Kranti was caused due to shock by burns. As stated by him all the injuries were ante-mortem. It is

further not in dispute that the alleged incident, wherein deceased Kranti is said to have received burn injuries, happened at her house in Mahatma

Phule Nagar at Bhokar district Nanded on 23rd December, 2000. It is further not in dispute that the said incident happened at about 3 p.m. in the afternoon.

16. The question, which first falls for our consideration is, whether death suffered by deceased Kranti was homicidal or accidental or suicidal. From the

entire material on record it is quite evident that it is nobody's case that deceased Kranti committed suicide. The possibility of suicidal death thus stands ruled out.

17. Accused No.1 has raised the defense that deceased Kranti got accidentally burnt. In his statement under Section 313 of Cr.P.C., accused No.1

has stated that deceased Kranti was suffering from epilepsy and she used to receive fits, whereupon she used to fall down. In the cross-examination

of the prosecution witnesses also a suggestion was given by the accused that deceased Kranti while cooking fell down due to fits and got burnt. An

attempt was also made by the accused to bring on record in the cross-examination of PW 4 â Chandrakalabai, the fact to the effect that she came to

know from the persons gathered on the spot that deceased Kranti had fallen due to fits while cooking and was therefore, injured and received burn

injuries. However, the defense so raised by the accused has been falsified by the declaration given by deceased Kranti about the cause of her death.

Had deceased Kranti received the burn injuries in the accident, there was no reason for her to falsely implicate the accused at the verge of her death.

The circumstances on record also do not support the plea taken by the accused. It has come on record through the report of the Chemical Analyzer

that the kerosene residues were detected on the half-burnt lahenga of the deceased, which was seized from the spot of occurrence. On the spot of

occurrence, no kerosene stove was noticed. On the contrary, the spot panchanama reveals that there was a "chul" (mud-stove) in the room

and half-burnt wooden log was found on the spot. In the circumstances, if the defense story has to be accepted, there was no reason for detection of

the kerosene residues on the half-burnt lehenga, which was recovered from the spot of occurrence. The detection of the kerosene residues on the said

lehenga fortifies the allegation made in the dying declaration by deceased Kranti that accused No.1 poured kerosene on her person and set her

ablaze. In her dying declaration Kranti had also narrated that she had bought 1 ½ liters kerosene and it was kept in the house. In pursuance of the

memorandum statement given by accused No.1, plastic canister wherein kerosene was stored was recovered. Though panch witnesses on

memorandum did not support, the recovery has been duly proved through the evidence of Investigating Officer. From the evidence on record,

unhesitatingly it can be held that deceased Kranti did not suffer the accidental death.

18. According to the prosecution, deceased Kranti suffered a homicidal death. It is the case of the prosecution that accused No.1, joined by accused

Nos.2 and 3, poured kerosene on person of deceased Kranti and set her ablaze. It is also the case of the prosecution that accused No.1 thereafter

bolted the door of the room from outside wherein deceased Kranti was set on fire. It is also the case of the prosecution that deceased Kranti anyhow

opened the door and came out of the house and was then removed to the hospital where she ultimately died on 28th December, 2000.

19. In order to prove that deceased Kranti suffered a homicidal death, the thrust of the prosecution is on the dying declaration of the deceased

recorded by the learned Judicial Magistrate and the medical evidence on record. The discussion made in the impugned judgment reveals that the learned Trial Judge has rejected the dying declaration of deceased Kranti on the ground that the prosecution has failed to prove that the said dying declaration was made by deceased Kranti in a fit state of mind. While rejecting the evidence in the form of dying declaration, the learned trial Judge has accepted the defence of the accused that deceased Kranti sustained burn injuries accidentally while preparing the food. Resultantly, the finding of acquittal has been recorded by the learned Trial Judge. In light of the evidence, which has been brought on record, it has to be scrutinized whether the conclusion recorded by the trial judge can be sustained or deserves to be set aside.

20. The material on record reveals that the dying declaration of deceased Kranti was recorded by PW 9 "Anilkumar Janbaji Telang on 24th

December, 2000 when deceased Kranti was admitted in the burns ward at SGGM Hospital at Nanded. PW 9 was at the relevant time working as

Joint Civil Judge, Junior Division and Judicial Magistrate First Class at Nanded. As has been deposed by PW 9, on 23rd December, 2000, a requisition

was received to him for recording the dying declaration of deceased Kranti, who was admitted to SGGM Hospital, Nanded. PW 9 has further

deposed that he thereafter visited the SGGM Hospital and requested the Medical Officer to examine deceased Kranti. Accordingly, deceased Kranti

was examined by the said Medical Officer and on such examination, he told to PW 9 that the said patient, i.e. deceased Kranti was unable to speak at

that time. PW 9 has further deposed that he then instructed the police to again call him when the patient would come in a position to speak. PW 9

has further deposed that on 24th December, 2000, he received the information from the police that the concerned patient was able to speak and he,

therefore, should visit the hospital to record her statement. PW 9 has further deposed that he then reached to SGGM hospital at about 11.55 A.M.,

met the Medical Officer and visited the burn ward along with him. PW 9 has further deposed that he asked all the nearby persons and all other

strangers to go out of the burn ward and secured isolation of the patient whose statement he was to record. PW 9 has further deposed that on his

request the Medical Officer examined deceased Kranti and certified that she was able to give her statement. PW 9 has further deposed that he did

put 2-3 questions to deceased Kranti in order to verify whether she was able to understand import of the question. PW 9 has further deposed that

from the answers given by said patient to his question, he gathered that she was able to speak and understand the questions. Prior to that, it was also

deposed by PW 9 that the patient was conscious at the relevant time. PW 9 has also deposed that after his personal satisfaction, he started recording

the dying declaration of deceased Kranti in question and answer form. PW 9 has further deposed that after the recording was completed, he read out

the statement so written to the declarant, i.e. deceased Kranti and she admitted the contents of the statement so recorded to be correctly scribed.

PW 9 has further deposed that the Medical Officer was throughout present when he recorded the statement of deceased Kranti. P/W 9 has also

deposed that he took the impression of toe of her right foot, because her both the hands were burnt. PW 9 has also deposed that the Medical Officer

again examined deceased Kranti and gave opinion that she was conscious throughout recording of her statement. PW 9 has also deposed that he

attested the statement so recorded. During the course of his evidence before the Court, the statement so recorded by PW 9 came to be exhibited as

Exhibit-33.

21. In his cross-examination, PW 9 has admitted that he did not see the medical papers (Bed-head tickets) on 24th December, 2000 nor he enquired

with the Medical Officer about the treatment and medicines etc.

22. Perusal of the impugned judgment reveals that the learned trial Judge has declined to rely upon the dying declaration of deceased Kranti recorded

by PW 9 mainly on the ground that the Medical Officer nowhere mentioned in the two endorsements made by him on the dying declaration at Exh. 33

that the declarant during recording of her statement was in a fit state of mind. The learned Trial Judge has observed that the endorsement, which has

been made is about 'conscious' state of declarant. Then, relying upon the judgment of the Hon'ble Apex court in the case of Paparambika Rosamma

Vs. State of A.P. (1999) 7 SCC 695, the learned Trial Judge has ultimately recorded the conclusion that in absence of any such certification by the

Medical Officer that deceased Kranti was in a fit state of mind, no reliance can be placed on the dying declaration allegedly given by deceased Kranti

to PW 9. The learned Trial Judge has referred to some more judgments of the

Hon'ble Apex court as well as of this Court and ultimately recorded its conclusion in para 18 of the impugned judgment. I deem it appropriate to reproduce the entire said para, which reads thus, "18. In the light of the above legal position, in the instant case, I have no alternative but to reject the dying declaration as it is made in a fit state of mind of the patient is not proved beyond reasonable doubt by the prosecution." We reiterate that the conclusion, as aforesaid, recorded by the learned trial Judge was based on the decision of the Hon'ble Apex court in the Paparambaka Rosamma's case (cited supra).

23. As has been argued by the learned APP, the Constitution Bench of the Hon'ble Apex court in the case of Laxman Vs. State of Maharashtra "

(2002) 6 SCC 710, has overruled the judgment in Paparambaka Rosamma's case. In Paparambaka Rosamma's case, the dying declaration in

question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of the answers elicited from the declarant

to the questions put, he was satisfied that the deceased is in a fit disposing state of mind to make declaration. The doctor had appended a Certificate

to the effect that the patient was conscious while recording the statement; yet the Court came to the conclusion that it would not be safe to accept the

dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the

effect that the patient is conscious while recording the statement.

24. The learned Trial Judge in the impugned judgment in para 14 has reproduced some portion in the judgment of Paparambaka Rosamma's case,

which reads thus, "In the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would

be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a

declaration."

25. As has been observed by the Hon'ble Apex court in the case of Laxman Vs. State of Maharashtra (cited supra), in the later decision of the

Hon'ble Apex court in Koli Chunilal Savji Vs. State of Gujrat " (1999) 9 SCC 562, it was held that the ultimate test is whether the dying declaration

can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration, the officer concerned must find that

the declarant was in a fit condition to make the statement in question. The Hon'ble Apex court in the case of Laxman Vs State of Maharashtra (cited supra), has further referred to the earlier decision of the Hon'ble Apex court in Ravi Chander Vs. State of Punjab (1998) 9 SCC 303, wherein it had been observed that, for not examining by the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration earlier made, need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating the dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise. We deem it appropriate to reproduce herein below para 5 of the judgment in the case of Laxman Vs. State of Maharashtra (cited supra), wherein the Hon'ble Apex court has recorded its conclusions, which reads thus, "5. The court also in the aforesaid case relied upon the decision of this court in Harjeet Kaur VS. State of Punjab 1999(6) SCC 545 case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in Paparambika Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 to the effect that "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this court in Paparambika Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 must be held to

be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji vs. State of Gujarat 1999(9) SCC 562 case.â??

26. In view of the law laid down by the Constitution Bench of the Hon'ble Apex court in the case of Laxman Vs. State of Maharashtra (cited supra),

the conclusion recorded by the learned Trial Judge, that he had no alternative but to reject the dying declaration, as it is not proved beyond reasonable

doubt by the prosecution that it was made by the deceased 'in a fit state of mind', has to be turned down.

27. We have carefully perused the testimony of PW 9 Shri A.J. Telang. We have noted herein above that PW 9, before recording the statement of

deceased Kranti, had taken all care to remove the persons around the deceased, may be her relatives or friends or others and had also requested the

Medical officer to examine the declarant and to give his opinion whether she was able to give her statement. As has been deposed by Shri Telang

(PW 9), the doctor certified deceased Kranti to be fit for giving her statement. PW 9 has specifically deposed that initially he put 2Â3 questions to

deceased Kranti in order to verify whether she was able to understand the import of questions. has further deposed that he gathered that deceased

Kranti was able to speak and understand the questions. More importantly, PW 9 Shri Telang, in no uncertain words, has further deposed that after his

personal satisfaction that deceased Kranti was fit to give her statement, he started recording her dying declaration. It is further the matter of record

that PW 9 had recorded the dying declaration of the deceased in question and answer form. It has also come on record that after the recording of the

statement was completed, PW 9 read over the said statement to deceased Kranti and she admitted the contents of the statement to have been

correctly scribed. PW 9 has also deposed that the Medical officer was throughout present during the course of his recording the statement of

deceased Kranti. It has also come on record through the testimony of PW 9 that he took the impression of toe of right foot of deceased Kranti

because her both the hands were burnt. PW 9 has also deposed that he appended the certificate overÂleaf the dying declaration and put his signature

below it. It has also come on record in his evidence that he gave one copy of the said dying declaration to the police and sent one copy in a sealed

envelope to the Chief Judicial Magistrate, Nanded. During the course of his evidence before the Court, original copy of dying declaration was placed

on record by him and he testified that it was recorded in his own handwriting, was bearing endorsement of the medical officer and the impression of the right foot toe of deceased Kranti and his attestation.

28.It is thus quite evident that PW 9 recorded the dying declaration of deceased Kranti by following due procedure and by observing all the mandatory requirements.

29.The learned Counsel for the respondents sought to contend that the prosecution must have examined the medical officer, who had certified

deceased Kranti to be fit for giving her statement recorded by PW 9 " Shri A.J.Telang. The learned Counsel further submitted that nonexamination

of the said medical officer has created serious doubts about the so-called endorsement alleged to have been made by the said Medical Officer. The

learned Counsel further submitted that the prosecution has not assigned any reason as to why it has not examined the said medical officer. We are,

however, not at all impressed with the submissions so made. Firstly, PW 9 has, in many words, deposed in his testimony before the court about

examination of deceased Kranti by the medical officer and certifying deceased Kranti to be fit for giving her statement. PW 9 had also deposed that

in his presence, endorsement was made by the medical officer and he has also put his signature below the said statement. It was also deposed by PW

9 that the said medical officer was throughout present during the course of recording of the statement by him of deceased Kranti. Apparently, there

appears no reason for doubting the facts, as are deposed by PW 9, who is a responsible officer holding the post of JMFC. He was a disinterested

witness and as such, we do not find any reason to disbelieve the facts, as above, deposed by the said witness. In the circumstances, merely because

the said Medical Officer has not been examined or on the ground that PW No.9 was unable to state name of the said medical officer, the facts so

deposed by PW 9 cannot be discarded or disbelieved. Further, we reiterate that Shri A.J.Telang " JMFC himself had ascertained the condition of

deceased Kranti for giving her statement and only after his satisfaction that deceased Kranti was in a position to give her statement that he recorded

the statement of the deceased.

30.In V. Paripurnachary Vs. State of Adhara Pradesh " AIR 1998 SC 2680, the Hon'ble Apex court has held that,"Judicial Magistrate

recording dying declaration â?" Doctor's certificate regarding fitness not available, Â Where the dying declaration recorded by Judicial Magistrate

contained a detailed narration of the incident â?" the Magistrate had put questions to her and the questions and answers were recorded by him â?

there was doubt about the authenticity of the dying declaration in absence of the doctor's certificate regarding the fitness or otherwise of the person

making the declaration, it was held that the Magistrate himself deposed in Court in categorical terms that he had satisfied himself that the deceased

was in a fit condition to make the statement â?" the dying declaration could be relied upon for conviction of the accused.â??

31.In the instant matter, we have no doubt about the genuineness of the facts deposed by PW 9 in his testimony before the court that deceased Kranti

was examined by the same medical officer, who was at the relevant time, present in the Burn Ward and has certified her to be fit for giving her

statement. We, therefore, do not find any substance in the objection so raised.

32.It was then contended by the learned Counsel for the respondents that considering the fact that deceased Kranti had received extensive burn

injuries to the extent of 98%, it was highly improbable that she could have given any statement to PW 9.

33.Learned APP was prompt enough in bringing to our notice the evidence of Dr.Ramesh Waghmare (PW 1), who had conducted the post mortem

examination on dead body of deceased Kranti. The learned APP pointed out that a suggestion was given to PW 1 Dr. Waghmare in his crossÂ?

examination that deceased Kranti was unable to speak because of internal damage; however, Dr. Waghmare denied the said suggestion. The

evidence of Dr. Waghmare further reveals that he had also denied the suggestion that the upper jaw and lower jaw of deceased Kranti were totally

burnt. It has also come on record through evidence of Dr. Waghmare that tongue of the patient, i.e. deceased Kranti, was not paralyzed due to

burning. Referring to the fact that the hands and fingers of deceased Kranti were burnt and her skin was also peeled at some places, a suggestion

was given to Dr.Waghmare that she was unable to understand and was mentally unfit. Dr.Waghmare has denied the said suggestion also. Further

suggestion that due to such burn, the capacity of deceased Kranti to think and understand was also impaired, was also denied by Dr. Waghmare. In

sum and substance, though the accused heavily attempted to bring on record that deceased Kranti was not in a position to give her statement because of her physical as well as mental condition, they could not bring any such evidence or circumstance on record.

34.The learned Counsel for the respondents then invited our attention to the fact that deceased Kranti was not certified to be fit for giving her statement on 23rd December, 2000. The learned Counsel further submitted that even on 25th December, and then on 26th and 27th December, also, there are the endorsements showing that the patient, i.e. deceased Kranti, was unable to give her statement. The learned Counsel submits that in the facts, as above, serious doubts are raised whether on 24th December, 2000, deceased Kranti was really in a condition to give her statement.

35.We are not convinced with the submissions so made. There appears no reason to disbelieve the testimony of PW 9 that deceased Kranti was in a fit condition when he recorded her statement. Only because one day before recording her statement and from next day thereafter deceased Kranti was said to be not in a condition to give her statement, does not mean that she was not in a condition to give her statement on 24th December, 2000.

PW 9 Shri Telang has testified that in his presence the Medical officer in the ward examined deceased Kranti and certified her to be fit for giving her statement. As has been noted earlier, the said medical officer was throughout present during the course of recording of the statement by PW 9 and he had certified deceased Kranti to be in a conscious state even after recording of the statement.

36.Further, as has been observed by the Hon'ble Apex court in the case of Ravi Chander Vs. State of Punjab (cited supra), PW 9 Shri Telang, who was at the relevant time, working as JMFC, being a disinterested witness and a responsible officer of the court and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating the dying declaration, question of doubt on declaration recorded by the Magistrate does not arise.

37.In the aforesaid circumstances, we have no hesitation in relying upon the dying declaration recorded of deceased Kranti by PW 9 Shri Telang.

38.We deem it appropriate to reproduce herein below the entire dying declaration of deceased Kranti recorded by JMFC, which is at Exhibit 33 in

the record of the trial court. First we will reproduce the vernacular version and then its translation in English. Vernacular version of dying declaration

lanHkZ %& R.M.L.C.No.3243/DNH fn- 23@12@2000 iks-gs-dkW- ds-ds- cks[kkjs c-ua- 1196 iks-LVs- othjkckn ;kaps i= fn-23-12-2000 e`R;qiwoZ

tckc Ex.33

iz'u 1 yk %& rweps ukao dk; ?

mRrj %& Å?karh Hkz- ccu culksMsPatient is o; 20 oÃ"]Z jk- Hkksdj] rk- Hkksdj] ft- ukansM

able to give statement Sd/Å?JR II24/12 12 p.m. iz'u 2 jk %& ?kVuk d'kh ?kMyh ?

mRrj %& ek>s uoÃ?;k'kh HkkaM.k >kys ek>s uoÃ?;k'kh HkkaM.k gks.;kps nksu&rhu fnol vkf/k ek>k ewyxk fodh ;kph y?koh can >kyh gksrh- eh

'kstkjP;k ewyklkscr ekÃ-;k ewykl nok[kk.;kr ?ksmu xsys- ek>k nsj jke gk ?kjr ukpr gksrk- eh ekÃ-;k nsjkl lkaxhrys fd eh mRreyk ?ksmu nok[kk.;kr

tkr vkgs- ekb;k lklÃ?;kus mRre lkscr tkrkuk eyk ikghys- ekÃ-;k lklÃ?;kus ekÃ-;k nsjkl lkaxhrys dh fg ewyxh mRreP;k eksB;k Hkkokl ?ksmu fu?kwu

xsyh o nsjkl lkaxhrys fd rw R;kaP;k ekxs tk o rhyk ?ksmu ;s nsj vkyk ukgh rks Eg.kyk 'kstkj /keZ Eg.kwu usys rj dk; >kys ? eh nok[kk.;krwu ijr vkys

o ekÃ-;k uoÃ?;kl Eg.kys ewykl ?ksmu xsys rj dk; >kys- lkljk Eg.kkyk fd gh R;kP;k eksB;k Hkkoklkscr xsyh eh uoÃ?;kl Eg.kkys lkljk vlk

Eg.kkY;keqGs rqEgkl [kjs okV.kkj ukgh dk; ? vls EgVY;kus ekÃ-;k Hkk;k pkanjko o uoÃ?;kl jkx vkyk- uojk Eg.kkyk rqyk ckbZ lksMwu iq:Ã" lkscr

ikghts- uoÃ?;kyk Eg.kkyk rwÃ-;k ekol cghuhl tkGwu ekjys R;kps dks.kh dk; dsys- eh rwyk tj tkGwu ekjys rj ek>s dk; djrhy- eh Lo;aikd d:u uoÃ?;kl

MCck Hk:u fnyk o Hkk;kl tsou okk uojk v;/kZ okVsrwu okil vkyk- eh ?kjh fnM fyVj jkWdsy ?ksowu Bsoys gksrs- ekÃ-;k uoÃ?;kus gkrkr

jkWdsy ?ksrys o ek>s vaxkoj vksrys- eyk dkMh ykoyh o eh tGkys- eyk tkG.;kr ek>k nsj jke] Hkk;k pkanjko ;kapk i.k gkr vkgs- ?kVusP;k osGsl jke

gk ?kjh uOgrk rks MkSj ;k xkoh xsyk gksrk- ek>k uojk lk[kGh ckgs:u ykowu fu?kwu xsyk-

iz'u 3 jk %& dk; >kys ?

mRrj %& eh tGkys uarj nkj tks&;kr yksVys nkj m?kMys Patient was eh vksjMys- 'kstkjh o yksd tek >kys ek>s Hkk;k pkanjko o conscious R;kpk

fe= lkbZukFk o ldqckbZ rhP;k eqykus eyk nok[kkU;kr throughout vkuys-

statement ek>h tckuh ekb;k lkax.;kizek.ks fygwu ?ksryh vkgs rh [kjh vkgs o cjkskj vkgs- tckuh nwikjh ckjk oktrk lq: d:u 12-35 oktrk laiuh-Sd/Å?JR II

12.35 p.m. fn- 24-12-2000 Ākarh Hkz- ccu culksMs 24.12.2000 osG 12-00
nwikj rs fgps mtos ik;kpk vaxBk12-35 nwikj

CERTIFICATE

Certified that the above statement is recorded as per say of patient after she is identified by doctor concerned and after obtaining endorsement that

she is conscious and capable of making statement. Statement is started at 12.00 noon and composited at 2.35 p.m. Dt. 24.12.2000 24.12.2000 Sd/Ā?

at Guru GovindsinghĀ A.J. Telang, Memorial Hospital, Nanded Jt. J.M.F.C. Nanded
English Translation of Dying declaration Ā??Reference Ā?

RMLC No.3243/DNH Dt.23.12.2000 Police Head Constable Ā?" K.K.Borware,
B.No.1996 Police Station Vajirabad's letter dt. 23.12.2000. Patient is

able to give statement sd/ J.R.II 12 p.m.24/12

DYING DECLARATION

Question 1-What is your name ?

AnswerĀ?Kranti w/o Baban Bansode.

Age 20 Yrs., R/o Bhokar, Tq.Bhokar, Dist. Nanded.

Question 2Ā?How the incident happened ?

AnswerĀ?Quarrel occurred between me and my husband.

2Ā?3 days prior to the said quarrel with my husband my son Vicky was not able to pass Urine.

I took my son in the dispensary along with a neighbouring boy. My brotherĀ?inĀ?law was dancing in the house.

I informed my brotherĀ?in law that taking Uttam with me I am going to the dispensary.

My fatherĀ?inĀ?law also saw me when I was proceeding along with Uttam.

My fatherĀinĀlaw told to my brother in law that this girl left along with the elder brother of Uttam and asked him to follow me and to fetch me back.

BrotherĀ?inĀ?law however did not follow me. He told that what was wrong in that if the neighbouring boy was taken with.

I returned from the dispensary and told my husband Ā?? what had gone wrong if I took me with the neighbouring boy.Ā??

FatherĀ?inĀ?law said that she went along with his elder brother.

I told to my husband whether he will not believe what I have stated since my fatherĀinĀlaw had stated something different. Thereupon, my elder

brother-in-law Chandrao and my husband suspected.

My husband said you require the company of a man and not of a woman.

The husband said Your cousin sister was burnt to death. What happened to that ?

If I burn you to death what wrong you will do to me ?

I cooked food, filled the tiffin for my husband and served the food to my brother-in-law.

My husband returned home from the half-way.

I had purchased 1 ½ liters of kerosene and had kept the same in the house.

My husband took the kerosene in his hands and poured it on my person.

He ignited the matchstick and I got burnt.

My brother-in-laws Rama and Chandrao are also involved in burning me.

When the alleged incident happened, Ram was not at house. He had gone to village Daur.

My husband chained the door from outside and went away.

Question 3 What happened ?

Answer After I was burnt, I pushed the door with force.

It was opened.

I shouted.

Neighbours and the public gathered.

My brother-in-law Chandrao and his friends Sainath, Sakhubai and her son brought me in the hospital.

My statement is recorded as it was narrated by me.

The contents thereof are true and correct.

Recording of the complaint was commenced at 12.00 noon and was completed at 12.35.

Dt.24.12.2000 impression of right Time 12.00 noon toe of Kranti w/oto 12.35 noon.Baban Bansode patient was conscious throughout the statement

sd/Medical Officer 12.35 p.m.24.12.00

39.In her dying declaration at Exh. 33, deceased Kranti had specifically alleged that accused No.1Baban poured kerosene on her person and set her

on fire. She has also deposed that her husband, i.e. accused No.1, bolted the door of the room from outside wherein she was set ablaze. From the

facts, as were stated by deceased Kranti in her dying declaration it is revealed that her husband was suspecting her character. Accompanying of

Uttam, a neighbouring boy when deceased Kranti had taken her son to the doctor, was taken in an ill spirit by the accused. Even father in law of

deceased Kranti had made a very bitter comment.

40.The dying declaration of deceased Kranti also reveals that accused No.1 had challenged her that even if he burns her alive, she won't be able

to take any action against him. It is further revealed that accused no.1 had given an example that cousin sister of deceased Kranti was also burnt to

death and nothing wrong happened to the perpetrator of the crime.

41.Though we have referred to all the facts as are revealing from the dying declaration of deceased Kranti, the fact which has material bearing is

that, deceased Kranti has specifically alleged that it as accused No.1, who poured kerosene on her person and set her on fire. We do not see any

reason to disbelieve the facts so stated by deceased Kranti in her dying declaration. The law is well settled that the dying declaration of deceased can

be the sole basis for convicting the accused. We are fully satisfied that the declaration given by deceased Kranti, vide at Exh. 33, is her voluntary

statement given in a fit state of her mind. From her dying declaration it is quite evident that the accused was suspecting her character. It is also

discernible that accompaniment of a neighbouring boy viz. Uttam Sarode with deceased Kranti when she had taken her son to the doctor for his

treatment, ultimately become the cause for her death. In her dying declaration though deceased Kranti has stated that accused Nos. 2 and 3 were

also involved in causing her death, she has not attributed any specific role to them. From the entire evidence on record also, no such fact or

circumstance has come on record showing complicity of accused Nos. 2 and 3 either in pouring kerosene on person of deceased Kranti or in setting

her ablaze. In absence of any such evidence against them, they have been rightly acquitted by the learned Sessions Judge. We do not see any reason

to cause any interference in the finding of acquittal recorded by the learned Sessions Judge in favour of the said accused.

42.It has to be further stated that in view of the statement given by the relatives of deceased Kranti from her maternal side, the charge under Section

498A was also framed against the accused persons. As has been deposed by

mother of deceased Kranti as well as her maternal grandfather, accused No.1 had demanded an amount of Rs.20,000/â from deceased Kranti and her family members and due to nonâfulfillment of the said demand, deceased Kranti was subjected to cruelty. Deceased Kranti however in her dying declaration has not even whispered about any such monetary demand and harassment to her for non fulfillment of the said demand. In the circumstances, the learned Trial Judge has correctly acquitted the accused persons from the charge under Section 498A of IPC. There seems no reason to meddle with the finding so recorded. However, we cannot accept the argument advanced on behalf of the accused that on the count of inconsistency between the facts stated by mother of the deceased and deceased Kranti taking to the allegation of monetary demand by the accused persons, the entire evidence and more particularly the dying declaration of deceased Kranti also has to be rejected.

43.The dying declaration of deceased Kranti (Exh.33) cannot be rejected or even doubted on the ground that it does not contain the fact stated by PW

2 â?" Anusayabai, her mother and PW 3 â?" Mahadu, her maternal grandfather, that an amount of Rs.20,000/â was demanded by the accused and

for nonâfulfillment of the said demand, deceased was subjected to cruelty. What we could gather from the narration in the dying declaration is the

fact that, accompaniment of neighbouring boy Uttam with deceased Kranti was the proximate cause for the accused and more particularly accused

No.1 to take a gruesome step of pouring kerosene on person of deceased Kranti and to burn her alive. While on the deathâbed, deceased Kranti was

not likely to state anything false which had not happened.

44.After having considered the entire evidence on record, and more particularly the dying declaration of deceased Kranti at Exh. 33, there has

remained no doubt that learned Trial court has manifestly erred in acquitting accused No.1. The impugned order to that extent, therefore, deserves to

be quashed and set aside. We reiterate that the prosecution has, beyond reasonable doubt, proved that accused No.1 knowingly and intentionally

caused the death of deceased Kranti by pouring kerosene on her person and setting her ablaze. We, therefore, hold accused No.1 guilty for the

offence punishable under Section 302 of IPC.

45.In the result, following order is passed, â?

ORDER

i) Criminal Appeal No.583/2002 is partly allowed; ii) The judgment passed in Sessions Case No. 92/2001 by Ad hoc Additional Sessions Judge,

Nanded on 26th June, 2002 stands quashed and set aside to the extent it relates to acquittal of accused No.1 from the offence punishable under

Section 302 of IPC;

iii) Accused No. 1 "Baban s/o Kishanrao Bansode is held guilty for the offence punishable under Section 302 of IPC and is sentenced to suffer

imprisonment for life and to pay fine of Rs.1,000/â, in default to suffer R.I. for six months; iv) Accused No.1 shall be entitled to the set off under

Section 428 of Code of Criminal Procedure of the period of imprisonment already undergone by him against the substantive sentence imposed upon

him;

v) Accused No.1 shall surrender before the Trial Court to undergo the sentence imposed upon him.