
(2012) 03 BOM CK 0002

In the Bombay High Court

Case No : Criminal Appeal No. 508 of 2006

Tukaram Dashrath Padhen and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 452

Citation : (2013) 1 Crimes 326

Hon'ble Judges : Sadhana S. Jadhav, J;P.V. Hardas, J

Bench : Division Bench

Advocate : N.A. Badar, for the Appellant; R.S. Nayak, for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—The appellants, who stand convicted for an offence punishable under Sections 302 and 452 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 1,000 (rupees one thousand only) by each of them, in default of which to undergo further S.I. for one month with no separate sentence for the offence punishable u/s 452 read with Section 34 of the Indian Penal Code, by the Additional Sessions Judge, Darwha; by judgment dated 4.7.2006, in Sessions Trial No. 265 of 2004, by this Appeal questions the correctness of their conviction and sentence. Facts, in brief, as are necessary for the decision of this Appeal may, briefly, be stated thus:

PW9 ASI Bhikusing Pawar, who on 2.10.2003. was attached to Darwha Police Station received a memo from the Medical Officer, Cottage Hospital, Darwha at about 11.05 a.m. about admission of injured Lata in the hospital with burns. Ex. 37 is the said memo received by PW9 ASI Pawar. On the basis of the said memo. PW9 ASI Pawar, issued a requisition at Ex. 48 to the Tahsildar, Darwha for recording the dying declaration of injured Lata. On the same day at about 12.50 p.m., the Police Constable Bandu came to the Police Station and handed over a dying declaration of Lata to PW9 ASI Pawar. On the basis of the said dying declaration, PW9 ASI Pawar registered an offence vide Crime No. 160 of 2003. u/

s 307 read with Section 34 of the Indian Penal Code against the accused. The printed FIR is at Ex. 88. After registration of the offence, the investigation was handed over to PW12 PSI Akaram Pawar, PW12 PSI Akaram Pawar, who was also attached to the Darwha Police Station, received the case dairy of Crime No. 160 of 2003 on 2.10.2003. He, accordingly, proceeded to village Telgavhan, i.e. the scene of the incident, and in the presence of panchas drew the scene of the offence panchanama at Ex. 83. From the scene of the offence he seized partially burnt cover of mattress, burnt pieces of quilt, burnt pieces of quilt and burnt pieces of sari and petticoat, one plastic can containing about 50 grams of kerosene and one match box. The accused who were present in the village were arrested under arrest panchanamas at Exs. 58, 58A and 58B. On the next day i.e. on 3.10.2003, PW 12 PSI Pawar proceeded to the General Hospital at Yeotmal and recorded the statement of injured Lata at Ex. 101. The statement of other witnesses were also recorded. It appears that Lata succumbed to her injuries and on 7.10.2003. PW12 ASI Pawar received the case papers in respect of death of Lata i.e. A.D. No. 2003 from police Station Yeotmal. On the basis of the said documents and with the permission of the Judicial Magistrate First Class, Darwha, Section 302 of the Indian Penal Code was added. The seized property was referred to the Chemical Analyzer, Nagpur, on 16.10.2003 and further to the completion of investigation, a charge sheet against the accused was filed.

2. On committal of the case to the Court of Sessions. Trial Court vide Ex. 29 framed the charge against the accused for the offences punishable under Sections 452 and 302 read with Section 34 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. Prosecution in support of its case examined 12 witnesses. The trial Court upon appreciation of the evidence of the prosecution convicted and sentenced the accused as afore stated:

3. In order to effectively deal with the submissions advanced before us by the learned Counsel for the appellants and the learned Assistant Government Pleader, it would be useful to refer to the evidence of the prosecution witnesses.

4. PW 8 Vilas Navrange, a Medical Officer, who was working at the Cottage Hospital. Darwha states that on 2.10.2003 at about 10.30 am Lata was brought to the hospital with burns. Lata was admitted in the hospital and necessary treatment was given to her. PW8 Dr. Vilas Navrange thereafter, informed police Station. Darwha. At about 11.35 a.m. one Mr. Alone, a Naib Tahsildar came to the hospital for recording the dying declaration of Lata PW4 Anant Alone, a Naib Tahsildar contacted PW8 Dr. Vilas Navrange and apprised him of the purpose of his visit. PW4 Mr. Alone requested Dr. Vilas Navrange to issue a certificate regarding condition of Lata. Accordingly. PW8 Dr. Vilas Navrange examined Lata and certified that Lata was conscious and was competent to give her statement. The said certificate is at Exhibit-85. PW4 Anant Alone then recorded the statement of Lata and after conclusion of the recording of the statement, requested PW8 Dr. Vilas Navrange to certify that Lata was conscious throughout the recording of the statement. Accordingly. PW8 Vilas Navrange again examined

Lata and opined that Lata was in a fit condition through out the recording of the statement. The said certificate of Dr. Vilas Navrange is at Exhibit-86.

5. In the cross examination, he has admitted that he had not brought the case papers because the case papers remain in the name of the patient. He has also admitted that he had not brought the bed-head ticket of Lata. He has admitted that the bed-head ticket contains the entire details of the treatment given to the patient. He has further admitted as true that he could not state as to the nature of the treatment which was given to Lata on 2.10.2003. He has admitted as true that because of pains Lata was groaning as Lata had sustained about 70% burns. He has admitted that he could not state whether the burns were epidermal burns, dermoepidermal burns or deep burns. He has denied the suggestion that he had issued the certificate without examining Lata. He has also admitted as true that as condition of Lata was serious he had referred Lata to the General Hospital, Yeotmal on the same day. In the further cross-examination he has admitted as true that the burns were on the nose, lips, chest and abdomen. He has admitted that the cumulative effect of the injuries was serious.

6. PW4 Anant Alone, Naib Tahsildar states that on 2.10.2003, he was working as a Naib Tahsildar at Darwha. On the same day at about 11.30 a.m., while he was in the office, he received a memo from the Darwha Police Station for recording the dying declaration of Lata. The said memo is at Ex. 49. He, accordingly, reached the Cottage Hospital, Darwha at 11.35 a.m. and requested the Medical Officer to ascertain, if Lata was in a fit condition to give her statement. The memo issued to the doctor is at Ex. 77. PW4 Anant Alone further states that he along with the Medical Officer proceeded to the place where the burn was admitted and, thereafter, the Medical Officer issued the certificate that Lata was conscious. PW4 Anant Alone states that he enquired from the patient her name and the patient told her name as Lata and her age as 35 years. PW4 Alone, thereafter, enquired from Lata age as 35 years. PW4 Alone, thereafter, enquired from Lata regarding the incident. Lata had stated, that an amount of Rs. 300 (rupees three hundred only) was deposited with her father-in-law and when she had asked him to return the said amount the father-in-law had stated that he would not return the amount but would kill her. She further stated that her brother-in-law Dayaram and Yogiraj and her father-in-law Tukaram and her mother-in-law Shantabai caught her and poured Kerosene on her and set her ablaze and thereafter, ran away stating that they would not give a house to her and would not permit her to construct the house there. The aforesaid recording of the statement commenced at 11.40 a.m. The statement was read over to Lata and Lata admitted the contents to be correct and thereafter, signature of Lata was obtained on the statement. The dying declaration of Lata is at Ex. 78. The dying declaration concluded at 11.50 a.m.

7. As per the dying declaration PW4 Ananta Alone, reached the hospital at 11.35 a.m. and the first endorsement of the Medical Officer at Ex. 85 is also at 11.35 a.m. in the dying declaration Lata had stated that her father-in-law had declined

to give the amount and had stated that he would kill her. Lata states that she was held by her brother-in-law Dayaram, her mother-in-law Shantabai and her other brother-in-law Yogiraj and then kerosene was poured on her and she was set ablaze. Thus in the dying declaration at Ex. 78. Lata does not ascribe any overt act to her father-in-law Tukaram.

8. In the cross examination PW4 Anant Alone has admitted that the Medical Officer had issued the certificate within 2 to 3 minutes. The certificate was issued after "seeing the patient". He has denied the suggestion that the medical certificate was issued by the Medical Officer by sitting in his office. PW4 Anant Alone has volunteered that the doctor had examined the patient and then had issued the medical certificate. He has admitted that he could not assign any reason for not writing in the dying declaration that the statement was recorded as per the say of patient. The recording of the dying declaration concluded at 11.50 a.m. and in the certificate issued by the Medical Officer the time which is stated is also 11.50 a.m.

9. The dying declaration at Ex. 78 has been recorded on a cyclostyle proforma. The cyclostyle proforma does not contain any statement that the dying declaration was read over to the patient and the patient had admitted the correctness of the dying declaration. It is extremely curious that PW4 Anant Alone reached the hospital at 11.35 a.m. and met the Medical Officer and thereafter, proceeded to the bed of the patient and in the certificate given by the doctor the time is stated to be 11.35 a.m. Similarly the time of conclusion of the recording of the dying declaration is said to be 11.50 a.m. and in the certificate issued by the Medical Officer the time which is stated is also 11.50 a.m. PW8 Dr. Vilas Navrange had stated that it took five minutes for him to examine Lata and thereafter he had issued the certificate. The timings of the certificates, therefore, may raise legitimate suspicion as whether the Medical Officer had in fact examined Lata before issuing the said certificate.

10. PW12 PSI Akaram Pawar states that on the next day i.e. on 3.10.2003 he had gone to the General Hospital at Yeotmal and had recorded the statement of Lata at Ex. 101. The statement of Lata at Ex. 101 does not contain any endorsement of the Medical Officer. The statement of Ex. 101 is an elaborate statement Lata had stated that they had received a house under the Gharkul Scheme from the Govt. and were residing in the said house. Her husband had expired about five years prior to the incident. She has also admitted that she used to receive some money from the Govt. under the Niradhar Yojana. She has admitted that her children were residing with her relatives as they were studying there while her elder daughter was residing in a hostel. She further states that out of the money which she had saved she had lent an amount of Rs. 300 (rupees three hundred only) to her father-in-law Tukaram. She further states that she had demanded the money while her father-in-law and brother-in-law were demanding the open land in front of her house. On Lata refusing to part with the possession of the open land, the accused used to quarrel with her. About

2 to 3 days prior to the incident she had demanded Rs. 300 (rupees three hundred) from her father-in-law. Her father-in-law had stated that he would not return the said amount and Lata could do whatever she wanted. Her father-in-law had stated that they would kill Lata. A demand for giving possession of the open land was made but Lata had stoutly declined to give possession of the open land. She further states that her mother-in-law Shantabhai and her fathers-in-law Tukaram and Yogiraj had come there and all of them manhandled her and had slapped her and given fist blows to her. On hearing her cries many people of the surrounding area had come out of their houses and were witnessing the quarrel. One Bhimrao had separated the quarrel and, thereafter, Lata went inside the house. She states that her brother-in-laws remained in front of the house but were abusing her. After the quarrel dispute between them was settled, the spectators who were present in front of their houses returned back to their houses. She further states that her father-in-law Tukaram, her mother-in-law Shantabhai and her brother-in-laws Yogiraj and Dayaram came inside her house and started quarrelling with her. Her father-in-law had stated that Lata would not give the land till she is alive and therefore, set her on fire. Thereupon, her mother-in-law Shantabhai and her brother-in-law Yogiraj and Dayaram caught her and her father-in-law Tukaram brought a can of kerosene from the house and poured kerosene on her and brought a match box and set her ablaze. She states that after she caught fire the accused went out of the house and, therefore, she started rolling on the mattress spread on the cot in the house. She states that matters and the quilt also caught fire and she, therefore, went in the kitchen and poured water from a container on herself. She extinguished the quilt and the mattress also by pouring water from the container. She states that she threw aside the petticoat and the sari and, thereafter, wrapped another Petticoat around her and sat moaning in the house. One Mobin Rathod came there and she narrated the incident to him and asked him to convey a message to her other brother-in-law Duryodhan, who was residing at Mangkini At about 9.00 O'clock her brother-in-law came there and brought her to the hospital at Darwha. She has admitted that the Medical Officer at Darwha administered; first aid to her and referred her to the hospital at Yeotmal.

11. The statement of the injured at Exhibit 101 does not indicate that any certificate of the Medical Officer was obtained before it was recorded. In any event, PW12 PSI Akaram Pawar also does not state that he had asked the Medical Officer to ascertain the condition of Lata and had, thereafter, recorded the statement of Lata. The evidence of PW12 also does not indicate that he was subjectively satisfied that Lata was in a fit condition to give her statement. PW12 also does not state that he had asked the relatives to withdraw themselves from the ward before the statement at Ex. 101 was recorded. The statement at Exhibit-101 does not bear the time of commencement of the recording nor does it bear the time of conclusion of the recording of the statement. The statement at Exhibit-101 does not bear either the signature or the thumb impression of injured Lata. The aforesaid circumstances raise grave suspicion about the

recording of the statement of Lata and about the fitness of Lata to narrate the longish statement.

12. The memo at Exhibit 49 is dated 17.11.2003 and is addressed to the Police Station Officer, Darwha Police Station. The said memo has nothing to do with informing PW 4 Anant Alone about recording of the dying declaration.

13. The prosecution has then relied upon the evidence of PW 1 Namdeo, father of deceased Lata. PW1 Namdeo states that his eldest daughter Lata was married to the appellant about 20 years prior to the incident. About two years prior to the incident he had gone to Shendurjana to meet his other daughter Chanchala and on the same day one Mobin resident of Telghavan had come to the house of Chanchala and had informed him that Lata had been set ablaze. On getting the said information, PW1 Namdeo and his son-in-law Gajanan and his daughter Chanchala proceeded to the Government Hospital at Yeotmal. He had noticed Lata being admitted in the hospital having burns all over her body, except her mouth and head. When Namdeo had asked Lata as to how she had sustained the burns, Lata had informed him that when she had demanded an amount of Rs. 300 (rupees three hundred only) to her father-in-law Tukaram, her father-in-law had quarrelled with her. Lata had also informed him that her father-in-law was demanding the vacant land for constructing a house but Lata had declined to give the said land to him and on that her father-in-law had quarrelled with her and, thereafter, her father-in-law, mother-in-law and two brothers-in-law had entered her house and had poured kerosene and had set her ablaze. He further states that he had thereafter, gone to the General Hospital at Yeotmal and on the fourth day of the incident Lata had succumbed to her injuries at 11.00 a.m.

14. In the cross-examination, he has admitted that his daughter Lata did not possess any agricultural land, He has also admitted as correct that Tukaram owns four acres of agricultural land while accused Shantabai was owning nine acres of agricultural land. He has also admitted as correct that accused Tukaram had transferred two acres of agricultural land in the name of his sons Duryodhan and accused Dayaram. Namdeo has admitted as correct that he had desired that Tukaram should transfer some land in the name of children of Lata as her husband Bhaskar had expired. Namdeo has further admitted as correct that he and his daughter Lata had tried to convince accused Tukaram through Ramkrushna, maternal uncle of husband of Lata, for transferring some land in the name of sons of Lata. He has admitted as correct that Tukaram had declined to transfer the land in the name of sons of Lata till they were capable of cultivating the land themselves. Namdeo then admitted as correct that since Tukaram did not transfer the land in the name of sons of Lata, he and Lata were displeased with Tukaram. He has also admitted as correct that apart from working as an agricultural labourer Lata had no other source of earning her livelihood. Namdeo has also admitted as correct that the financial condition of Tukaram and Yogiraj was sound as they were doing business of money lending. He has also admitted that neither Tukaram nor Yogiraj were giving any amount

to Lata towards the maintenance and education of her children. Namdeo has also admitted as correct that he and Lata were displeased with accused Tukaram and accused Yogiraj on that score also. He has further admitted as correct that the land which was transferred to Dayaram was a fertile land as compared to the land which was transferred to Duryodhan. He has admitted that since accused Tukaram and accused Shantabai were intending to transfer the entire land in favour of accused Yogiraj, accused Duryodhan was also displeased with them. Namdeo has further admitted as correct that Duryodhan and accused Tukaram were not on talking terms since last 10 to 12 years. He has further admitted as correct that Duryodhan had admitted Lata in the hospital. He has also admitted that when he had gone to the hospital Duryodhan was present in the hospital. He has also admitted as correct that since the condition of Lata was critical. Lata was shifted from Darwha to Yeotmal. He has also admitted as correct that at Yeotmal, Lata was admitted in the Intensive Care Unit (ICU).

15. Thus, from the evidence of PW1 Namdeo it seems that deceased Lata had informed him that all the accused had poured kerosene on her and all the accused had set her ablaze. Namdeo had admitted that he and his daughter Lata were displeased with accused Tukaram and Yogiraj and Duryodhan, brother-in-law of Lata was also displeased with Tukaram and Shantabai as well as accused Yogiraj.

16. PW2 Duryodhan states that deceased Lata was his sister-in-law while accused Tukaram and Shantabai are his parents and accused Yogiraj and Dayaram are his brothers. According to him, on the day of the incident about 8.00 to 8.30 a.m. one Mobin had come to his village Mangkinhi and had informed him that Lata had sustained burns. He, accordingly, went to the house of Lata and had noticed Lata lying on a cot having sustained burns. He brought Lata by a bus to the General Hospital at Darwha and, thereafter, took Lata to Yeotmal. After: about two and half days of admission of Lata in the hospital at Yeotmal, Lata succumbed to her injuries and died. In the cross-examination, he has admitted as true that he is residing at Mangkinhi since last 10 to 12 years and has also admitted that he is not on good terms with his father and that is the reason why he was residing at Mangkinhi. He has also admitted as true that his parents were intending to transfer the entire agricultural field to accused Yogiraj and, therefore, he and Lata were displeased with them. He has further admitted as true that when he had asked Latabai as to why she had done so. Latabai only looked at him but did not speak anything. He has further admitted as true that he had accompanied Latabai from the time she was admitted in the hospital till Latabai succumbed to her injuries, He has further admitted as follows:

It is true that from the time she was admitted in the hospital, till her death. Latabai did not speak with anybody, it is true that one "Saheb" came in the hospital to make inquiry with Latabai but that time she did not speak anything and then said "Saheb" made inquiry with him he wrote something and then went out of the hospital".

(emphasis supplied)

He has admitted as true that he had sold the bullocks of Tukaram. In further cross-examination he has admitted as true that "when "Saheb" came in the hospital at that time Latabai was unconscious?.

(emphasis supplied)

17. This witness who obviously was on inimical terms with the accused was not declared hostile by the prosecution after the admissions given by him in the cross-examination. PW2 Duryodhan is a prosecution witness and the admissions given in the cross- examination can certainly be taken into consideration and cannot be brushed aside merely on the premise that Duryodhan is the son of the accused. Admittedly, Duryodhan and Lata were of one side while the accused were on the other side. The admissions given by Duryodhan cannot be considered as admissions given by a witness to favour the accused. Thus these admissions, therefore, would be germane while evaluating the evidence of the dying declaration. The evidence of this witness cannot be wished away by the prosecution.

19, PW3 Chanchala, sister of deceased Lata states about the oral dying declaration of Lata. Chanchala states that she had gone to the hospital at Yeotmal and had asked Lata as to what had happened and Lata had disclosed to her that when she had gone to the house of her father-in-law to demand the amount of Rs. 300 (rupees three hundred only) her father-in-law and the other members of his family had declined to pay the amount and had threatened Lata that in case she demands the amount she would be killed. According to Chanchala. Lata further disclosed to her that all the accused entered her house, poured kerosene on her and set her ablaze. In cross-examination, omissions have been elicited that Chanchala had not disclosed in her statement that the Medical Officer at Darwha had informed her that Lata had been shifted to the hospital at Yeotmal. She has admitted not to have stated in her previous statement that Lata had demanded Rs. 300 (rupees three hundred only) and at that time all the accused poured kerosene and set her ablaze with a match stick. Similarly, she has admitted not to have stated in her previous statement that Lata informed her that all the accused entered her house, poured kerosene on Lata and set her ablaze.

19. PW6 Dnyaneshwar, a neighbour of Lata states that on the day of the incident at about 7.00 a.m. he was present in his house and, had heard the noise of a quarrel and, therefore, came out of his house. He states that he saw all the accused manhandling Lata and one Bhimrao had intervened in their quarrel. Dnyaneshwar states that, thereafter, he entered his house and Lata had also gone inside her house. At about 8.00 am he had heard the shouts of the villagers that "she is burnt". Hearing this he came out of the house and noticed all the accused proceeding to their from the house of Lata. Accused Tukaram was holding a stick in his hand and had abused the villagers. In cross-examination he

has admitted, that he knows one Prakash Tayde, who is the brother of Lata. He has also admitted as true that a day prior to his evidence in the Court Prakash and halted at the house of Mobin Rathod at Telgavhan. Dnyaneshwar has admitted as true that he along with Prakash Tayde had come to the Court. He has admitted that in the Court premises he had talked with Prakash. Omission has been elicited in the cross-examination that he had not stated in his previous statement that all the accused were manhandling Lata and that he had heard the shouts of the villagers as "she is burnt". Similarly, omission has been elicited in the cross-examination that he had not stated in his previous statement that he had seen all the accused going to their house from the house of Lata. He has then admitted in cross-examination that accused Shantabai was shouting that her daughter-in-law had burnt and that she was not opening the door.

20. PW11 Prakash Rathore states that a quarrel was going on between the accused and Lata and accused Tukaram had manhandled Lata. One Bhimrao had intervened in the quarrel. Prakash also states that he tried to intervene but accused Tukaram abused him. He then states that after some time Lata went inside the house while the accused were abusing her. After some time all the four accused entered the house of Lata. He states that he returned back to his house and heard the cries of Lata as "save me, let me go, leave me". He states that he immediately came on the road and saw Lata sitting in her courtyard engulfed by flames, shortly, thereafter, all the four accused came from the house of Lata. Prakash states that thereafter, he went to the field of Chauhan for harvesting Jowar crops. In the cross-examination he has admitted, that till his statement was recorded by the police he had not disclosed the incident to anyone. He has further admitted that his statement was recorded on the third day of the incident but does not know if Lata was alive on that day. He has admitted that his statement was recorded on 4.10.2003 in the evening. He has admitted that he had received the information that Lata had succumbed to her injuries. Omission has been duly proved that he had not stated in his previous statement about hearing the cries of Lata as "save me, let me go". Omission has also been proved that he had not stated that he saw all the accused coming in the courtyard from the house of Lata.

21. In respect of the dying declaration recorded by the PW4 Anant Alone, we find that he had received the memo at 11.30 a.m. and 11.35 a.m. he had reached the hospital and had contacted the Medical Officer. PW4 Anant Alone and the Medical Officer then went to the ward where Lata was admitted. The endorsement of the Medical Officer that Lata is in a fit condition to give her statement is signed at 11.35 a.m. The recording of the dying declaration commenced at 11.40 a.m. and concluded at 11.50 a.m. The Medical Officer has certified that Lata was fully conscious while giving her statement at 11.50 a.m. As pointed out by us earlier the memo which was issued to the Medical Officer was received by the Medical Officer at 11.30 a.m. it is impossible that PW8 Vilas Navrange, a Medical Officer could have examined Lata and given the endorsement at 11.35 a.m. itself. It is therefore, obvious to us that the

endorsement of PW8 Dr. Vilas Navrange that Lata was conscious and fit to give her statement has been mechanically given without examining Lata. Further we find that PW2 Duryodhan brother-in-law of Lata and who had teamed up with Lata against the accused has clearly admitted that Lata from the time she was admitted in the hospital till her death had not disclosed anything to the Authorities. In fact, according to him, though attempts were made at recording the dying declaration, no dying declaration could be recorded. PW2 Duryodhan claims to be present with Lata till her death in the hospital at Yeotmal. Mr. Duryodhan makes no reference to the recording of the dying declaration at Exhibit-77 by PW4 Annat Alone. Thus these suspicious circumstances, therefore, impel to us to discard the dying declaration completely.

22. In respect of the dying declaration recorded by PW12 PSI Akaram Pawar at Ex. 101, we find that no reliance at all can be placed on the said dying declaration. PW12 PSI Akaram Pawar had not obtained the endorsement of the Medical Officer regarding the fitness of Lata to give her statement. PW12 PSI Akaram Pawar also himself does not state that he found Lata fit and conscious to give her statement. The time of recording of the dying declaration is not stated on Ex. 101. The dying declaration at Exhibit-101, therefore, does not pass the tests laid down by the Court regarding the acceptability of the dying declaration.

23. When the Court is called upon to appreciate the evidence of written dying declaration the Court has to be extremely cautious and examine with meticulous care the evidence regarding recording of the dying declaration. Merely because witnesses came forward and depose about the recording of the dying declaration, it should not impel the Court to immediately accept the dying declaration. It has to be remembered that the declarant is not available for cross examination and, therefore, the prosecution must prove, apart from the truthfulness of the contents, the factum of the recording of the dying declaration as well as the fact that the declarant was in a fit mental condition to give the statement. Once suspicious circumstances are found in the evidence, the Court should be extremely slow in placing implicit reliance on the dying declaration. It is to be remembered that the conviction can be recorded on the dying declaration alone if the court finds the dying declaration to be wholly reliable. It is, therefore, necessary for the Court to scrutinize the evidence and place reliance on the dying declaration only if the evidence in respect of the recording of the dying declaration is of "sterling" quality. If there are suspicious circumstances the Court should reject the dying declaration and look for other evidences if it is available. Mechanical acceptance of the dying declaration de hors a meticulous scrutiny of the evidence relating to the recording of the dying declaration must be deprecated in the present case as we have pointed out in the light of circumstances stated by us, we do not find the dying declarations to be pieces of evidence which would inspire the confidence of the Court for implicit acceptance. The aforesaid dying declaration, therefore, will have to be left out of consideration.

24. In respect of oral dying declaration PW1 Namdeo states about going to the hospital accompanied by his daughter (PW3) Chanchala. PW1 Namdeo claims that Lata had disclosed the incident to him in the hospital. Obviously PW3 Chanchala was present in the hospital when Lata had made the alleged disclosure. Omission has been elicited the cross-examination of PW3 Chanchala in respect of the oral dying declaration. If that be so, according to us evidence of PW1 and PW3 in respect of the oral dying declaration also becomes doubtful. No reliance also can be placed on the testimony of PW6 who claims to have seen the accused going from the house of Lata as well as manhandling Lata. In the light of the omissions on these aspects elicited in the cross- examination the conduct of PW11 Prakash is extremely unnatural. He claims Lata was manhandled and also states of hearing the cries of Lata. However, he has admitted that till his statement was recorded i.e. three days after the incident he had not disclosed the incident to anyone. Omission on vital aspect have been elicited in the cross-examination which would affect the acceptance of his testimony. The evidence of PW2 Duryodhan gives a death blow to the evidence of the witnesses in respect of oral dying declaration. Duryodhan claims to be present with Lata till her death and according to him. Lata had not uttered a single word to anyone. The medical case papers of Lata at Darwha and at Yeotmal have also not been placed on record. The Medical Officer from the hospital at Yeotmal has also not been examined. It really becomes doubtful if the relatives of Lata could freely prance around in the intensive Care Unit (I.C.U.) questioning Lata who was then battling for her life. Mobin, who it appears to be first person to have questioned Lata has also not been examined. For the aforesaid reasons, therefore, we find that no reliance at all can be placed on the evidence of the prosecution. According to us, therefore, this is a fit case of giving benefit of doubt to the accused and, accordingly, Criminal Appeal is allowed and the conviction and sentences of the appellants are hereby quashed and set aside and the appellants are acquitted of the offence with which they were charged and convicted. Fine, if any, paid by the appellants be returned to them. Since the appellants are in jail, they be released forthwith, if not required in any other case.