



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2281 OF 2011**

RAJENDRA S/O RAMDAS KOLHE APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 15.11.2010 passed by the High Court of Judicature of Bombay, Bench at Aurangabad (hereinafter ‘the High Court’) dismissing Criminal Appeal No. 635 of 2008, Rajendra Ramdas Kolhe Vs. State of Maharashtra, filed by the appellant thereby confirming the judgment and order dated 23.07.2008 passed by the 3rd Ad Hoc Additional Sessions Judge, Ambajogai (‘trial court’ hereinafter) in Sessions Case No. 60/2006.

2.1. It may be mentioned that by the judgment and order dated 23.07.2008, the trial court had convicted the appellant for committing an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer life imprisonment and to pay a fine of Rs. 25,000/- with a default stipulation. The appeal filed by the appellant against the aforesaid conviction and sentence was dismissed by the High Court.

3. The prosecution case in brief is that wife of the appellant Rekha was a police constable and lived in the police colony at Ambajogai. Her husband i.e. the appellant was serving in the army. He had come home on leave.

3.1. On 22.07.2002, at about 08:30 PM, Rekha had sustained burn injuries in the quarter where she was residing. According to the prosecution, she was subjected to cruelty by her husband Rajendra and brother-in-law Suresh. She was also subjected to sustained cruelty at the hands of her other in-laws including father-in-law, mother-in-law and sister-in-law. On the fateful day, Rekha was beaten by her husband Rajendra and brother-in-law Suresh. They tied her hands with a *gamcha* and her feet by a towel. Then the husband gagged her face. Brother-in-law

got a match box and a bottle of kerosene. Husband poured the kerosene on her person and lit the matchstick. In the process, she got completely burnt. She was taken to the hospital by the neighbours where her dying declaration was recorded by PW-6 being Ex. 59 on the basis of which Ambajogai Police Station registered Crime No. 182/2002 under Sections 307, 498A, 342, 323 and 504 read with Section 34 IPC.

3.2. Investigation of the crime was conducted by PW-10. He broke open the locked room where the incident had taken place and seized partially burnt lady's clothes, a bottle containing residue of kerosene, broken mangalsutra etc. Later on, another dying declaration of the victim was recorded by the Special Executive Magistrate being Ex. 65. On 24.07.2002, at about 11:00 PM, Rekha expired due to the burn injuries. Following the same, Section 302 IPC was added to the FIR.

3.3. On completion of investigation, chargesheet was submitted by the police. Appellant alongwith the father-in-law, mother-in-law and sister-in-law of the deceased were arrayed as accused. In so far brother-in-law Suresh is concerned, he was found to be a juvenile. Therefore, his case was segregated and sent to the Juvenile Justice Board.

3.4. In the trial of the appellant and the three others, prosecution examined in all 13 witnesses. Statements of the accused including the appellant were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC). Stand of the defence was that it was not a case of homicide but a case of suicide. In addition to the above, appellant also tendered evidence of a doctor.

3.5. After considering the evidence on record and the rival contentions, the trial court came to the conclusion that prosecution could not prove that the accused persons in furtherance of their common intention had subjected the deceased to harassment and cruelty and thereby committed an offence punishable under Section 498A IPC read with Section 34 thereof. The trial court also did not find any material against the father-in-law, mother-in-law and sister-in-law of the appellant for committing murder of Rekha. However, the trial court accepted the contents of both the dying declarations Ex. 59 and Ex. 65 coupled with the evidence of the prosecution witnesses and held that death of Rekha was homicidal and not accidental. While acquitting the father-in-law, mother-in-law and sister-in-law of the appellant, the trial court held that prosecution had established beyond

reasonable doubt that accused No. 4 i.e. the appellant alongwith his minor brother Suresh had in furtherance of their common intention committed murder of Rekha. Therefore, the trial court held the appellant guilty of the offence punishable under Section 302 IPC. After a separate hearing, the trial court sentenced the appellant as above.

4. Aggrieved by the aforesaid order of conviction and sentence, appellant preferred appeal before the High Court. By the judgment and order dated 15.11.2010, the High Court relied upon the written dying declaration of the deceased Ex. 59 recorded by PW-6 and also the oral dying declarations of the deceased made before PW-2, PW-3, PW-4, PW-7 and PW-8 and thereafter upheld the judgment of conviction of the trial court. Holding that the trial court judgment warranted no interference, the appeal was dismissed.

5. This Court by order dated 16.08.2011 had issued notice. Thereafter *vide* order dated 02.10.2011, leave was granted. However, prayer for bail was rejected at that stage.

6. By order dated 30.06.2016, this Court noted that appellant had already undergone about nine years of sentence.

Therefore, the sentence was suspended and bail was granted to the appellant.

7. Learned senior counsel for the appellant strenuously argued that there are material contradictions in the evidence of the prosecution witnesses. That apart, the High Court had rightly not relied upon Ex. 65 i.e. the dying declaration recorded by the Special Executive Magistrate as that was not proved. In so far Ex. 59 dying declaration is concerned, he submits that PW-12, the doctor, had given the time of recording the dying declaration as 11:45PM, both as the starting point as well as the time of conclusion which is a significant lacuna. It casts a serious doubt about the credibility of the declaration. He submits that since the courts below had discarded the theory of domestic violence, there could be no other reason for the appellant to commit murder of his wife. As a matter of fact, it has come on record that the appellant had tried to save the deceased and in the process had got burnt on his right hand. He had taken the deceased alongwith his brother to the hospital. That being the position, the conviction and sentence is liable to be interfered with.

7.1. On the other hand, learned counsel for the respondent supports the conviction and sentence of the appellant. He submits

that the evidence on record clearly establishes beyond any reasonable doubt the guilt of the appellant. Prosecution could successfully prove the guilt of the appellant beyond any reasonable doubt. The dying declaration Ex. 59 is too significant to be overlooked. Minor discrepancies here and there cannot impeach the prosecution case. Therefore, there is no reason to interfere with the judgment of conviction as affirmed by the High Court. The appeal should be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. At the outset, it would be apposite to dilate on the evidence tendered by the material prosecution witnesses before we proceed to the written dying declaration Ex. 59.

10. PW-2 is Rajendra, a police constable. In his examination in chief, he stated that the deceased was serving as a lady police constable at Ambajogai Police Station. She was residing in a quarter in the police colony in front of his quarter. On the date and time of the incident, he saw many ladies residing in the police colony standing near the quarter of the deceased alongwith a few police constables. PW-2 went there and made enquiries. One constable Rajgire, who was his neighbour, told him that husband

and brother-in-law of Rekha had set her on fire by pouring kerosene. She was taken to the S.R.T.R. Hospital at Ambajogai for treatment. Thereafter PW-2 alongwith Sayyed Aslam went to the hospital and saw Rekha taking treatment in the OPD. Police constable Sayyed Chand was present in the OPD. He asked Rekha in the presence of PW-2 and his friend as to how she had sustained the burn injuries. Rekha told that her husband and brother-in-law had set her on fire by pouring kerosene. According to her, she got married about two years ago. She was treated properly for about 15 days. Thereafter, her father-in-law, mother-in-law, sister-in-law and brother-in-law used to instigate her husband whenever he used to come home on leave from the army. They used to tell him that she was retaining her entire salary instead of handing over the same to her in-laws. They also raised questions on her character which was cited as the reason for not handing over her salary to them. On such instigation, the husband used to abuse and assault her.

10.1. Though she was selected for the police sports competition at Beed on 14.07.2002, her husband did not allow her to participate in the sports competition. On the day of the incident, she was not allowed to come out of the house for the whole day.

Between 08:30PM to 09:00PM, her husband and brother-in-law tied her hands with a *gamcha*; they also tied her legs with a towel. The brother-in-law brought a bottle of kerosene and a matchbox and gave to the husband. Thereafter, her husband gagged her mouth by one hand and poured kerosene on her person by the other hand. The husband then lighted the matchstick from the matchbox and set her on fire.

10.2. PW-2 stated that when he had gone to the hospital, the husband and brother-in-law of Rekha were not present.

10.3. In his cross-examination, PW-2 stated that in his statement before the police, it was not recorded that the in-laws of Rekha had told her husband that she was not paying the salary for which Rekha was abused and assaulted. In the statement under Section 161 Cr.P.C., it was also not recorded that Rekha was selected for the police sports competition on 14.07.2022. The statement made by him that Rekha's husband i.e. the appellant had closed her mouth by one hand and poured kerosene by the other hand, was also found not mentioned in the Section 161 statement. However, he stated that PW-6 Assistant Sub Inspector Dake had recorded the statement of Rekha in detail in the hospital when PW-2 was present.

11. PW-3 Kausalyabai is the mother of the deceased Rekha. She stated that after marriage, Rekha was properly treated by her husband and other in-laws for about 15 days. Thereafter, they started ill-treating her on the ground that she did not part with her salary. Her elder daughter Shyamla had telephoned her and told her that Rekha was set on fire by her husband Rajendra and her brother-in-law Suresh. She came to the hospital at Ambajogai along with her son and daughter-in-law and met Rekha. Rekha told PW-3 that her husband and brother-in-law had poured kerosene and set her on fire. At that time, her mother-in-law, father-in-law and sister-in-law were present. Rekha had told her that her neighbours had shifted her to the hospital while her husband and in-laws fled away.

11.1. In her cross-examination, she stated that police had recorded her statement after the death of Rekha. She acknowledged that police had not recorded in her Section 161 statement that her daughter Rekha was subjected to cruelty by her husband and in-laws; and on the day of the incident, she was confined to the house. It was also not recorded that accused Rajendra and Suresh had set her on fire by pouring kerosene. She had not stated before the police when Rekha's husband and

brother-in-law had set her on fire; that father-in-law and sister-in-law were also present and that all of them ran away. According to her, though she had stated before the police that all the accused were present in the house and after setting Rekha on fire, all of them fled from the house, the same was not recorded.

12. Brother of the deceased, Milind, is PW-4. In his examination-in-chief, he stated that the in laws, brother-in-law and sister-in-law of deceased Rekha had suspected her character. They used to incite the appellant about the character of the deceased and non-sharing of her salary with them. He stated that husband and brother-in-law of Rekha had killed her by setting her on fire. When he came to know about the incident, he alongwith his wife, children and mother came to Ambajogai on the same night i.e. on 22.07.2002 and met Rekha in the hospital. When he made enquiries with her, she told him that her husband and brother-in-law had set her on fire. In the hospital, none of her in-laws were present. On their arrival in the hospital, PW-4 found his sister Shyamla near Rekha. While taking treatment, Rekha died on 24.07.2002.

12.1. In his cross-examination, he stated that when he had gone to the hospital, his sister (the deceased) was completely burnt

and was groaning. He stated that the police had recorded his statement as per his say. Though he had stated before the police that in the hospital, his sister Rekha had informed him that her husband and brother-in-law had set her on fire, he could not assign any reason why the police did not record the same.

13. We may now turn to the evidence of PW-7, Sayyed Chand, who was also a policeman serving in the Ambajogai Police Station and residing in the police colony. In his evidence-in-chief, he stated that at about 09:00 PM, he heard hue and cry in the colony. When he came out of his house, he saw people gathered near the quarter of lady police constable Dhokne i.e. the deceased. Police head constable Rajgire and women members in the crowd informed him that lady police constable Dhokne was set on fire by her husband and her brother-in-law. He and Rajgire entered into the house of Dhokne and extinguished the fire. Both the hands of Rekha were tied by a towel. Rajgire untied the hands. At that time, the husband and brother-in-law were present in the house. Somebody brought an auto-rikshaw in which Dhokne, her husband and brother-in-law went to the hospital. He went to the hospital on the motorcycle of another person whose name he did not know. But when he reached the hospital, the husband and

brother-in-law were not present. He got Dhokne (Rekha) admitted in the hospital. When he enquired with Dhokne (Rekha), she told him that her mother-in-law and father-in-law had told her husband that she was not behaving properly and was not sharing her salary with them. Therefore, her husband and brother-in-law set her on fire.

13.1. In his cross-examination, PW-7 stated that police had recorded his statement on 23.07.2002 in the morning at the police station. According to him, though he had stated before the police that he and Rajgire had entered the house of Dhokne where they found her hands and legs were tied by a towel, whereafter they had extinguished the fire while Rajgire untied the hands and legs of Rekha, the same was not reduced to writing by the police. He had also stated that at that time, the husband and brother-in-law of Rekha were present in the house but this was also not recorded by the police. His statement that Rekha's mother-in-law and father-in-law used to inform her husband that she was not behaving properly, was also not recorded by the police.

14. Police head constable Rajgire is PW-8. In his examination-in-chief, he stated that as he was serving in the Ambajogai Police Station, he used to reside in the police colony.

22.07.2002 was his weekly holiday. Therefore, he was at home. The quarter of Rekha Dhokne, lady police constable, was in front of his quarter in the police colony. On 22.07.2002, between 08:30PM to 09:00PM, he heard cries of a lady from the house of Dhokne. On hearing the cries, he and his wife came out of his house and entered the house of Dhokne. At that time, Dhokne was completely burnt. He and his wife poured water on her person and extinguished the fire. At that time, husband and brother-in-law of Rekha Dhokne were standing near the door of the house. Rekha was saying loudly that her husband and brother-in-law had set her on fire. When somebody brought an auto-rikshaw, her husband and brother-in-law took her to the S.R.T.R. Hospital in the said auto rikshaw. On 24.07.2002, Rekha Dhokne died while taking treatment in the hospital. His supplementary statement was recorded by the police on 25.07.2002. According to him, he had learnt that the in-laws of Rekha were demanding that she should part with her salary and since she was unwilling to do that, she was set on fire.

14.1. In his cross-examination, PW-8 stated that though he had told the police that when he and his wife had extinguished the fire, the husband and brother-in-law of Rekha were present near

the door of the house, this is not reflected in his police statement. However, his statement that when his wife was pouring water on the person of Dhokne, husband Rajendra and brother-in-law Suresh were standing nearby, was recorded in his statement under Section 161 Cr.P.C.

15. PW-10 is Uttam, the police inspector, who had investigated the case. He stated that he had visited the crime scene alongwith two panchas. He had seized half burnt parker petticoat, gown, one water bottle smelling of kerosene, one half burnt stick, broken mangalsutra, lock etc. The seizure list was prepared by him and signed by the panchas.

15.1. In his cross-examination, he stated that on receiving information from the medical officer of the hospital that Rekha Dhokne had sustained burn injuries, he had directed PW-6 to record the dying declaration of her, entry of which was made in the station diary. In so far the Section 161 statement of PW-2 is concerned, he stated that PW-2 did not state before him that Rekha had told him that her husband had gagged her mouth by one hand and had poured kerosene on her person by the other hand. Regarding the Section 161 statement of PW-3, he stated that PW-3 did not say that the accused were demanding money from

Rekha and that they were subjecting her to cruelty by not providing her food, confining her to the house and on the day of the incident, accused Rajendra and Suresh had set her on fire by pouring kerosene. He further stated that PW-3 Kausalyabai had not stated in her Section 161 statement that Shyamla had informed her that accused Rajendra and his brother Suresh had killed Rekha by setting her on fire. Further, PW-3 did not say before him that all the accused ran away from the house after setting Rekha on fire. Regarding PW-4, he stated that PW-4 in his Section 161 statement did not mention that his sister Rekha had told him that her husband and brother-in-law had set her on fire. As regards PW-7 Sayyed Chand, PW-10 stated that PW-7 did not state in his Section 161 statement that he and Rajgire had entered into the house of Dhokne, that both her legs and hands were tied by a towel and that they had extinguished the fire. PW-7 did not say that Rajgire had untied the legs and hands of Rekha and at that time her husband and brother-in-law were present. PW-7 also did not state that Rajgire and the women members in the crowd had informed him that Rekha's husband and brother-in-law had set her on fire. PW-8 in her Section 161 statement, also did not say

that the husband and brother-in-law were present at the time when Rekha was burning.

16. Dr. Prashant Mohan Kedari is PW-12. On 22.07.2002, he was on duty as a resident medical officer in the S.R.T.R. Medical College and Hospital at Ambajogai having completed his MBBS that year with one year internship. He was incharge of burn ward No. 14 that day. PW-9 Bilkis Kachhi, the Special Executive Magistrate, came to the hospital to record the dying declaration of the patient Rekha who was being treated there. On her enquiry, PW-12 examined the patient and found that she was conscious and able to give statement. Statement of the patient in Ex. 65 was recorded by PW-9 (however, we need not go into this aspect of the matter as the High Court did not accept Ex. 65 as a valid piece of evidence). Thereafter, he was shown Ex. 59 which is another dying declaration of the deceased. He stated that there are two endorsements and signatures in Ex. 59. The signatures below the endorsements at both the places were of Dr. Kiran Kurkure i.e. PW-13.

16.1. In his cross-examination, he stated that he had not made any endorsement regarding his examination of the patient on 22.07.2002 in any document. At about 11:30PM, he started

clinical examination of the patient which went on for about 10 minutes.

17. Dr. Kiran Kurkure is PW-13. At the relevant point of time, he was serving as medical officer in the S.R.T.R. Medical College and Hospital at Ambajogai. At about 10:15PM on 22.07.2002, a patient by the name Rekha, wife of Rajendra Kolhe, was brought to the hospital by the police. Though she was having 99% burns, she was conscious. Her statement was recorded at 11:45PM. At that time, he was present. He stated that at the time of recording of her statement, the patient Rekha was conscious and was in a position to give statement. He further stated that he had put an endorsement on the statement (Ex. 59). It also bore his endorsement to the effect that the patient was fit for giving statement at present which was signed by him. He stated that the contents of Ex. 59 were correct. He proved his endorsements and the signatures on Ex. 59. He also stated that he had put an endorsement before recording the statement and another endorsement after recording the statement; the endorsement date and time was in his handwriting. Regarding the second endorsement after recording of the statement, he stated that the endorsement was his but by mistake he had mentioned the time

as 11:45PM. He also stated that at the time of admission of the patient, he had recorded the history narrated by her. The patient had informed him that her husband had set her on fire. He asserted that he had correctly recorded the history as narrated by the patient. It was in his own handwriting, the contents of which were proved by him (Ex. 117).

17.1. Though PW-13 was extensively cross-examined, nothing inconsistent or contradictory to what he had stated in his evidence-in-chief could be extracted.

18. We will analyze the evidence of PW-12 and PW-13 at the time of examination of Ex. 59. Before proceeding to Ex. 59, let us briefly analyze the evidence of the prosecution witnesses discussed thus far.

19. In his evidence-in-chief, PW-2 stated that constable Rajgire was in the crowd in front of the residence of Rekha and that he had told him that the husband and brother-in-law of Rekha had set her on fire by pouring kerosene on her person. While Rekha was undergoing treatment in the hospital, constable Sayyed Chand asked her in the presence of PW-2 as to how she had sustained the burn injuries. In response, Rekha stated that her husband and brother-in-law had set her on fire by pouring

kerosene. She had further stated that her in-laws used to instigate her husband whenever he used to come home on leave from the army, raising question marks over her character and citing that as the reason for not parting with her salary. This would be enough for the husband to abuse and assault her which ultimately led to the incident in question. However, in his cross-examination, PW-2 admitted that police had not included in his Section 161 statement that the in-laws of Rekha had told her husband that she was not handing over her salary to them for which Rekha was abused and assaulted. It was also not mentioned in the statement under Section 161 Cr.P.C. that the appellant had gagged the mouth of Rekha by one hand and poured kerosene on her person by the other hand. However, he stated that he was present in the hospital when PW-6 had recorded the statement of Rekha in detail (Ex. 59).

19.1. Likewise, in her cross-examination, PW-3 admitted that it was not mentioned in her statement recorded under Section 161 Cr.P.C. that her daughter Rekha was subjected to cruelty by her husband and in-laws. It was also not recorded that Rekha was confined to the house on the day of the incident. She had also not stated before the police that Rekha's husband and brother-in-law had set her on fire.

19.2. Similarly, in the statement of PW-4 recorded under Section 161 Cr.P.C., there was no mention that Rekha had informed him that her husband and brother-in-law had set her on fire.

19.3. There was also no mention in the statement of PW-7 before the police that he and Rajgire had entered the house of Rekha where they found her legs and hands were tied by a towel whereafter they had extinguished the fire and untied her. The said statement also did not contain that husband and brother-in-law of Rekha were present in the house while she was burning. It was also not recorded that the mother-in-law and father-in-law used to inform the husband that Rekha was not behaving properly.

19.4. In his cross-examination, PW-8 admitted that he did not mention in his statement under Section 161 Cr.P.C. that when PW-8 and his wife had extinguished the fire, the husband and brother-in-law of Rekha were present near the door of the house. However, it was mentioned that when his wife was pouring water on the person of Rekha, her husband and brother-in-law were standing nearby.

19.5. The above improvements in evidence by the prosecution witnesses were brought on record during the cross-examination of

PW-10, the investigating officer. Therefore, in addition to certain contradictions here and there, there is clear improvement in the version of the prosecution witnesses when they tendered evidence before the court. However, even in his cross-examination, PW-2 stated that PW-6 had recorded the statement of Rekha in detail in the hospital. This now brings us to the statement of Rekha made in the hospital which was recorded by PW-6 i.e. Ex. 59. While examining Ex.59, we will also analyze the evidence of PW-12 and PW-13.

20. In Ex.59, the deceased had stated that she was appointed as lady police constable in the police department on 12.12.1996. About three months prior to the date of the incident, she got transferred to the Ambajogai Police Station. She had married the appellant about two years ago. Appellant was employed in the army and posted at Jodhpur. About eight days prior to the date of the incident, he had come home on leave of fifteen days. She used to stay alongwith her in-laws in a quarter in the police colony at Ambajogai. After marriage, she was treated well for only about fifteen days. Thereafter, her mother-in-law and brother-in-law accused her of bad behaviour and suspected her character. She was subjected to verbal and physical abuse. The in-

laws demanded that she should handover her salary to them. When she declined, they would harass and abuse her as to why she needed her salary. The brother-in-law would instigate her other in-laws and her husband(appellant) as and when he was at home on leave that she was behaving badly for which the appellant should leave her. Because of such instigation, the husband(appellant) used to beat her. Though she was selected for the police sports competition at Beed, appellant refused to allow her to participate therein.

20.1. On 22.07.2002, appellant and her brother-in-law Suresh did not allow the deceased to go out of the house. Confining her to the house, she was physically assaulted. In the evening, they tied her legs with a towel and her hands with a *gamcha*. While her husband gagged her mouth, the brother-in-law got a matchbox and a bottle of kerosene. The husband poured the kerosene all over her body and lit a matchstick which set her ablaze. Her gown got burnt and, in the process, she suffered severe burns. At that time, the right hand of her husband(appellant) also got burnt.

20.2. When she screamed, the husband and brother-in-law opened the door and ran away. Somehow, she could come outside.

Then, people who had gathered outside her house extinguished the flames, put her in an auto and took her to the hospital.

21. PW-6 was serving as Assistant Sub-Inspector in the Ambajogai Police Station. He was on duty on 22.07.2002. In his evidence, he stated that the Police Station Officer of the police station had asked him to record the statement of Rekha who was admitted in the S.R.T.R. Hospital for burns. He made inquiries with the nurses serving in the burn ward where Rekha was being treated. He had visited the hospital at about 11:30 PM. Within 5 to 10 minutes, he started recording the statement of Rekha. Before recording the statement, he had requested the nurses to call the doctor whereafter Dr. Kiran Kurkure, PW-13, came. PW-13 examined Rekha and certified that she was in a position to give her statement. Thereafter, PW-6 recorded the statement of Rekha. But before recording her statement, he ensured that Rekha was in a position to give the statement. In his evidence, he narrated what Rekha had told him and what he had recorded. He stated that he had correctly recorded the statement of Rekha as per her say. He had read over the contents of the statement narrated by her and recorded by him to Rekha and she said that those were correct. As she was unable to sign or put her thumb impression because she

was severely burnt, PW-6 obtained the toe impression of her right leg. PW-13 had put his endorsements with signatures both prior to recording her statement and at the conclusion of her statement. Thereafter, PW-6 put his signature on both the pages. In his evidence, he proved the statement of Rekha which was shown to him.

22. PW-12 Dr. Prashant Kedari stated in his evidence that the two endorsements and signatures on Ex. 59 were that of Dr. Kiran Kurkure, PW-13.

23. PW-13 in his evidence stated that the statement of Rekha was recorded at 11:45 PM and he was present. Rekha was conscious and was in a position to give her statement. He proved his two endorsements and signatures below the endorsements. He also proved the correctness of the contents of Ex. 59. He explained that in the second endorsement, he had mentioned the time as 11:45 PM by mistake. He also asserted that at the time of admission of Rekha in the hospital, he had recorded the medical history narrated by Rekha. He proved the contents thereof (Ex. 117).

24. From the above, it is evident that in her dying declaration (Ex. 59) Rekha clearly stated about the role played by

the husband (appellant) and the brother-in-law in the incident which led to her burn injuries. The contents of the dying declaration have been proved by PW-6, PW-12 and PW-13. Though there are certain inconsistencies in their evidence, it is quite natural. Moreover, those are not material and do not affect the sub-stratum of her statement. The incident had occurred on 22.07.2002 with the dying declaration recorded on the same day within a couple of hours whereas the evidence was tendered in court by the above witnesses after 5 years. Such inconsistencies are bound to be there. In fact, identical statements by the material witnesses may create doubt in the mind of the court about the credibility of such evidence, as being tutored. That being the position, we are inclined to accept the dying declaration of the deceased (Ex. 59) as a valid piece of evidence.

25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a

conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

26. Section 32(1) of the Indian Evidence Act, 1872 deals with dying declaration. Since the said provision is relevant, it is extracted hereunder:

[32.] Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. – Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death. – When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

26.1. Section 32 says that statements made by a person who is dead or who cannot be found etc., be it in written form or oral,

are themselves relevant facts. As per situation(1), when the relevant facts relate to the cause of death, such a statement would be relevant whether the person who made it was or was not at the time of making the statement under expectation of death. Such a statement would be relevant whatever may be the nature of the proceedings in which the cause of his death comes into question. The relevancy is not confined to the cause of his death but also to the circumstances of the transaction which resulted in his death.

27. In *Khushal Rao vs. State of Bombay*¹, this Court examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and various judicial pronouncements, this Court laid down the following conclusions:

- (i) it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;
- (ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;

¹AIR 1958 SC 22

(iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

(v) a dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

28. The above conclusions were reiterated by this Court in *Paniben (Smt.) vs. State of Gujarat*². This Court declared that there is neither any rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration. However, the court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination; the deceased should be in a fit and proper state to make the declaration. But once the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

29. This Court highlighted the significance of a dying declaration in *Kundula Bala Subrahmanyam vs. State of Andhra Pradesh*³. The general rule is that hearsay evidence is not admissible. Unless the evidence tendered is tested by cross-examination, it is not creditworthy. However, Section 32(1) of the Evidence Act is an exception to this general rule. This Court observed as under:

18. * * * * *
A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of

² (1992) 2 SCC 474

³ (1993) 2 SCC 684

impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. * * * * *

30. Elaborating further, this Court in *Sher Singh vs. State of Punjab*⁴ held that acceptability of a dying declaration is greater because the declaration is made in extremity. When a party is on the verge of death, one rarely finds any motive to tell falsehood. It is for this reason that the requirements of oath and cross-examination are dispensed with in the case of a dying declaration.

31. In *Sudhakar vs. State of Madhya Pradesh*⁵, this Court observed thus:

20. The “dying declaration” is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the

⁴ (2008) 4 SCC 265

⁵ (2012) 7 SCC 569

intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

32. When there are more than one dying declaration, this Court in *Amol Singh vs. State of Madhya Pradesh*⁶, clarified that it is not the plurality of the dying declarations that matter. On the contrary, it is the reliability of a dying declaration which is significant. If there are inconsistencies between one dying declaration and the other, the court has to examine the nature of the inconsistencies, i.e., whether those are material or not.

33. In *Lakhan vs. State of Madhya Pradesh*⁷, this Court held that where there are multiple dying declarations with inconsistencies between them, the court would have to scrutinize the facts very carefully and, thereafter, take a decision as to which of the declarations is worth reliance.

⁶ (2008) 5 SCC 468

⁷ (2010) 8 SCC 514

34. Again, in *Ashabai vs. State of Maharashtra*⁸, this Court observed that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated independently on their own merit as to the evidentiary value of each. One cannot be rejected merely because of certain variations in the other.

35. As already discussed above, there is no reason for us to doubt the correctness of the dying declaration of the deceased (Ex. 59) which has been proved in evidence. Attending doctor has certified that the deceased was capable of narrating her statement. The substance of the dying declaration is also borne out by the medical history of the patient recorded by the doctor which has also been proved in evidence. Further, though there are inconsistencies and improvements in the version of the prosecution witnesses, there is however convergence with the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor. That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt.

⁸(2013) 2 SCC 224

36. We are mindful of the fact that appellant is on bail since the year 2016. Nevertheless, having sieved through the evidence carefully, we have no hesitation in our mind that appellant is guilty of committing the offence and that the guilt has been proved beyond all reasonable doubt.

37. In view of the above, the appeal is dismissed. Appellant is directed to surrender before the trial court within a period of two weeks from today to carry out his sentence.

.....**J.**
[ABHAY S. OKA]

.....**J.**
[UJJAL BHUYAN]

NEW DELHI;
MAY 15, 2024.