



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 327 OF 2023**

Piraji S/o Madhav Kumbhargave  
Age : 30 years, Occ : Agril.,  
R/o Shelgaon (Chatri), Tq. Naigaon,  
Dist. Nanded.

..APPELLANT  
(Accused No.1)

-VERSUS-

The State of Maharashtra

..RESPONDENT

...  
Advocate for Appellant : Mr. U.B. Bilolikar  
APP for Respondent/State : Mr. M.K. Goyanka

...  
**CORAM : NITIN B. SURYAWANSHI AND**  
**VAISHALI PATIL-JADHAV, JJ.**

**RESERVED ON : 20<sup>th</sup> APRIL, 2026**

**PRONOUNCED ON : 07<sup>th</sup> MAY, 2026**

**ORAL JUDGMENT (PER VAISHALI PATIL-JADHAV, J) :**

. The present appellant herein stands convicted for the offence punishable under Section 302 of the Indian Penal Code (for short, "IPC") and is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months, in Sessions Case No.28/2020 by the learned Additional Sessions Judge, Biloli, vide judgment and order dated 27.03.2023. Being aggrieved by the said judgment, the appellant has preferred

the present Criminal Appeal.

2. The case of the prosecution, in nutshell, is as follows :-

The marriage between accused no.1 – Piraji and deceased Komal took place prior to about one and half years of 19.07.2019. After a few days of marriage accused no.1 started assaulting and harassing the deceased on petty grounds. Accused nos.2 and 3 also used to illtreat deceased Komal. On 19/07/2019, at about 5.00 a.m., accused nos.1 and 3 asked the deceased to wake up, they abused her and accused no.1 assaulted her. Accused no.1 threatened the deceased that he would see her and left for the field. At about, 8.00 a.m., he returned home and asked Komal that she did not wake up early and she did not work, saying so, he poured kerosene from plastic can on Komal, ignited a matchstick and set her on fire. Komal raised hue and cry. Accused no.2 – Madhav reached the spot and put a blanket on Komal and extinguished the fire. Komal sustained burn injuries on her hands, legs, back, stomach, face and chest. She was taken by her neighbours to Government Hospital, Naigaon and from there she was referred to District Government Hospital, Nanded.

In the hospital, Executive Magistrate Mr. Vijaykumar Nagorao Pate (PW-4) recorded dying declaration of Komal. Her dying declaration was also recorded by the Police Head Constable Mr. Ramsinh Jaypalsinh Bayas (PW-2). He then forwarded the same to the Police Station. Accordingly, Crime No.107/2019 was registered for the offences punishable under Sections 307, 498-A and 504 read with 34 of the Indian Penal Code. During treatment, Komal succumbed to the burn injuries on 23.07.2019. After her death, Section 302 of the Indian Penal Code was added in the crime. Investigation was conducted and on completion of investigation, the charge-sheet was filed against three accused i.e. appellant-accused no.1, his father – accused no.2 and his mother – accused no.3.

The prosecution examined seven witnesses in support of its case. After recording evidence, the trial Court found the appellant guilty and accordingly, convicted him as aforesaid and acquitted accused nos.2 and 3. Hence, the present appeal.

3. Learned Advocate Mr. U.B. Bilolikar for the appellant submits that the prosecution case rests entirely on two dying declarations, which are not consistent, trustworthy and reliable. No medical record pertaining to the initial admission and treatment of the deceased at Rural Hospital, Naigaon is produced and there is no

record reflecting the history of homicidal burns. Taking into consideration the fact that Komal had suffered 96% burn injuries and she was given medicines named, Cefsula and Tramadol and because of the influence of medicines, it was not possible for her to give dying declarations. Both dying declarations are inconsistent with each other. PW-2 and PW-4 have not verified about the mental fitness of the deceased while recording the dying declarations. PW-4 in his cross-examination admits that though there is an endorsement of the doctor regarding fitness, the doctor was standing outside at the time of recording of dying declaration. Doctor has stated that deceased was in poor general condition and was uncooperative and because of pain, she was groaning, thereby rendering the statement unreliable. Therefore, it cannot be said that she was in a fit condition to give a reliable dying declaration. The dying declaration recorded by PW-2 is not recorded in question-answer form and is not in the handwriting of PW-2 and the one in whose handwriting it is recorded, is not examined.

4. He further submits that in absence of trustworthy dying declaration, the learned trial Court should have looked for corroboration, but there is no corroborative evidence or independent witnesses. The prosecution has failed to prove the intention and

motive. In these circumstances, the prosecution has failed to prove the case beyond reasonable doubt and the appellant is entitled for benefit of doubt. Hence, the appellant be acquitted.

5. In support of his case, learned Advocate for the appellant relied upon the judgments in (i) Uttam Vs. The State of Maharashtra (MANU/SC/0787/2022), (ii) Sampat Babso Kale and others Vs. The State of Maharashtra (AIR 2019 SC 1852), (iii) Ratan Vs. The State of Maharashtra (MANU/MH/3268/2024), (iv) Prabhakar Gangadhar Lokhande Vs. The State of Maharashtra (MANU/MH/5125/2024), (v) Shahaji Ashroba Falake and another Vs. The State of Maharashtra in Criminal Appeal No. 675/2021, dated 11.03.2025, (vi) Sandip Prakash Rathod Vs. The State of Maharashtra (MANU/MH/4426/2022), (vii) Malhari Ranoji Warkad Vs. The State of Maharashtra (2025(4) Mh.L.J. (Cri.) 473).

6. Learned A.P.P. submits that in both the dying declarations, the deceased has categorically attributed the fact of putting kerosene on her and setting her on fire to the appellant. Both the dying declarations were recorded in presence of the Medical Officer, and there are endorsements by the Medical Officer about the mental fitness, orientation and consciousness of the deceased. Both

the dying declarations are consistent about the happening of the incident and role attributed to the accused. According to him, since the dorsum of hand was burnt, it was not possible to take her thumb impression. So the dying declarations are endorsed by taking the toe impression of the left foot of Komal. The said fact is proved by the inquest panchanama (Exhibit P-44), wherein there is specific reference to the left foot toe of the deceased and that there was ink to the left toe. The prosecution has proved both the dying declarations and hence the conviction of the accused is sustainable on the basis of the same.

According to learned A.P.P., the trial Court has properly appreciated the evidence and has rightly convicted the appellant. Learned A.P.P. further submits that there is no merit in the appeal and the same is liable to be dismissed. He relied on the judgments, (i) State of Uttar Pradesh Vs. Veerpal and another [(2022) 4 SCC 741], (ii) Khushal Rao Vs. State of Bombay (1957 SCC Online SC 20), (iii) Laxman Vs. State of Maharashtra [(2002) 6 SCC 710] and (iv) Mukesh Vs. State for NCT of Delhi (AIR 2017 SC 2161).

7. Heard learned Advocate for the appellant and learned A.P.P. for the respondent/State, at length. With their assistance, we

have perused the record.

8. We now proceed to consider the dying declarations which are the basis for conviction of the appellant.

9. Dying Declaration at Exhibit-61 is the first dying declaration recorded by PW-4 Naib Tahsildar, Pate. It is recorded in question-answers form. To the question as to why Komal received burn injuries, how the incident has happened and who all were present, Komal disclosed that in the night there was a call from her sister-in-law. She told something. She does not know what she told but the husband assaulted her in the morning by wooden log and pipe. Pipe was broken. She shouted. Husband poured kerosene, lighted a matchstick, set her on fire and went out. Father-in-law extinguished the fire by a blanket. Neighbours brought her in the hospital. Husband used to illtreat her as he was not liking her. She had complaint against the mother-in-law- Sagarbai, father-in-law – Madhav and husband – Piraji. Recording of dying declaration was commenced at 5.35 p.m. and recording was completed by 6.00 p.m. There are endorsements of the Medical Officer, PW-3 at the beginning and at the end of the dying declaration.

10. PW-4 – Naib Tahsildar Mr. Vijay Pate, who recorded first dying declaration Exhibit-61, has deposed that on receiving a letter from the Gramin Police Station, he went to the burn ward of Government Hospital, Nanded at 5.00 p.m. He inquired with the Medical Officer about the patient. Medical Officer showed him the patient. He inquired with the Medical Officer, whether the patient was in a position to make statement. The Medical Officer examined the patient and opined that the patient was in a position to make the statement. Then he asked relatives of the patient and policemen to leave the ward. Then, he introduced himself and inquired with Komal about the incident. In response Komal disclosed stated that she is a resident of village Chatrishelgaon and she resides with her husband and his parents. She disclosed that on the previous day, her sister-in-law had made a phone call and that there was a talk between her sister-in-law and her husband, and that, on the next day, in the morning her husband assaulted her by means of a wooden log and pipe. At that time, the pipe was broken and thereafter, her husband had poured kerosene on her person and set her on fire. Then he left the house and that her father-in-law had put a blanket on her person and extinguished the fire. Before extinguishing the fire, her both hands, legs, back, stomach, face and chest had burned. Thereafter, she was brought by her neighbours for treatment to the Government

Hospital, Naigaon. From there, she was further brought to Government Hospital, Vishnupuri, Nanded and she has complained against her husband, mother-in-law and father-in-law. Patient admitted contents of the dying declaration to be correct and since the entire body of the patient was wrapped with bandage, he had obtained her left toe impression on the dying declaration. After recording the dying declaration, he had requested the Medical Officer to examine the patient about her condition and accordingly he had examined the patient and opined that the patient was stable. The dying declaration is signed by the doctor and by PW-4. Recording of the dying declaration started at 7.30 p.m. and ended at 8.00 p.m.

. In cross, PW-4 has stated that he received a telephonic message from the police and also received a phone call at about 4.00 p.m. from PW-2 Head Constable Mr.Ramsinh Jaypalsinh Bayas. Thereafter, he went to the hospital and along with Mr. Bayas, went to the burn ward. He said that he did not issue written letter to the Medical Officer. When he visited the patient in the burn ward, he noticed that the patient was completely burned. At that time, due to pains, Komal was groaning. When the Medical Officer was examining the patient, he was standing at a distance of 10 to 8 ft and cannot state what talks had taken place between the patient and Medical

Officer. He further admitted that he did not put questions to Komal to ascertain whether she was able to make a statement. At the time of recording of statement, except Komal no one was present there and the doctor was standing outside. After recording the statement he had called the doctor to examine Komal.

11. Second dying declaration Exhibit-47 is recorded at 7.30 p.m. on 19.07.2019 by PW-2 Police Head Constable, Bayas. PW-2 Police Head Constable has deposed that on 19.07.2019, when he was posted at Outpost, Government Hospital, Nanded at about 19.20 hours, a message was received from Kuntur Police Station for recording the statement of injured Komal. Accordingly, we went to ward no.9 and met the Medical Officer. He requested him to examine the patient. The Medical Officer examined the patient and opined that she was in fit condition to give statement. He put that endorsement on the blank paper. Thereafter, he asked the relatives of the patient to go outside the ward and started recording the statement. On inquiry, Komal disclosed while taking treatment at Ward No.1 at Government Hospital, Vishnupuri, Nanded that she is resident of village Chatrishelgaon. She stayed in the joint family of husband, mother-in-law and father-in-law. After some days of marriage, her husband started beating and illtreating her on small

reasons. Father-in-law and mother-in-law used to illtreat her. On 19.07.2019, at about 5 a.m. husband and mother-in-law woke her up and they both abused her. Husband assaulted her and left for the field saying that he would see her. Later on, husband returned to the house at about 8 a.m. and asked her that she did not wake up early and she did not work and brought a can of kerosene and poured it on her and ignited a matchstick and set her on fire. When she raised shouts, father-in-law had extinguished the fire by putting a blanket on her person.

In cross, he deposed that he had received wireless message informing him about the patient. Thereafter, he made entry in the register. Before recording of statement by him, another statement was recorded by PW-4 Naib Tahsildar, Mr. Pate. He did not request to the Medical Officer in writing for examining the patient. When he went to the ward, at that time, relatives of the patient were present in the ward and the movement of the said patient was blink. The Medical Officer did not put question to the patient. The patient was whining due to pain. While recording the statement he had put the question and the patient had replied but he did not record the dying declaration in question-answer form. He deposed that he had not made entry in the statement that the patient was able to speak and that her mental condition was good. He had taken the toe

impression of the patient but did not attest the same. The dying declaration is not recorded in his handwriting. He denied the suggestion that Komal was not in position to make statement and that the dying declaration was recorded as per say of her relatives. He also denied the suggestion that the Medical Officer did not examine Komal and put endorsement on the statement.

12. PW-3 - Medical Officer Vyankatesh Sudhakar Rao Kulkarni has stated that he was throughout present while recording of the dying declarations (Exhibit-47 and Exhibit-61). The Executive Magistrate, Mr. Vijaykumar Pate had visited the hospital at 5.35 p.m. for recording the dying declaration of injured Komal and he inquired with him about the condition of the patient to make a statement. He examined the patient and made endorsement to the effect that the patient was conscious, oriented, mentally fit and her vital parameters were within normal limits.

Thereafter, at 7.30 p.m. Head Constable Mr. Bayas (PW-2) had visited the hospital for recording dying declaration. At that time, he had requested him to examine the patient. He examined the patient and found that the patient was conscious, oriented and mentally fit. That her vital parameters were within normal limits for recording the dying declaration.

. In cross, he admitted that Mr. Bayas (PW-2) and Mr. Pate (PW-4) had given written requisition for his opinion but he had not brought the same with him. He denied the suggestion that on that day at about 5 p.m. he had examined the patient and he had made an endorsement on the case paper that patient had fever and that her blood pressure was 96/60 and that her general condition was poor. He has mentioned in the case paper that she was a-febrile. Understanding about the patient is given to her relatives. He then produced the original case papers at Exhibit-59 collectively. He admitted that patient had sustained 96% burn injuries and there were superficial and deep burn injuries on the face and neck of patient. He stated that only after going through the entries in the case paper, he can state that he had prescribed Cefsula 1.5 gm and Tramadol, but he admitted that those are antibiotics and painkiller drugs. He denied that pain killer drugs are sedatives. He admitted that Komal had sustained 96% burn injuries. He admitted that when he examined the patient, general condition of the patient was poor and that her blood pressure was 95. He admitted that in burn cases, the patient goes in shock and that it may affect his mental faculty. He volunteers that it may generally happen after 48 hours.

13. PW-1 Sanjay Jaywantrao Aaneraye had reached the spot at the time of incident. He has deposed that on 19.07.2019, at about 8.00 a.m., he was proceeding to Naigaon by motorcycle. He heard the shouts from the house of accused, and therefore, stopped his motorcycle and found that Komal, the wife of accused, was ablazed. Father-in-law was present in the courtyard of the house and he was trying to extinguish the fire. Crowd had gathered in front of the house of the accused. Thereafter, ambulance was called and Komal was carried to Naigaon Hospital. At that time, Komal was not in a position to speak. Police had recorded his statement. PW-1 was declared hostile.

14. PW-5 – Anita Vyankatrao Patne, mother of the deceased has not supported the prosecution case. She has deposed that marriage of Komal with accused no.1 – Piraji had taken place on 21.02.2018 at village Chatrishelgaon. After marriage, Komal was treated well by the accused persons. The incident has taken place prior to about three years. At that time, Komal was residing with the accused persons. On that day, at about 11.00 a.m., she had received a message from her neighbour that deceased Komal while cooking, her corner of the saree had caught fire and therefore, she has sustained burn injuries and she was admitted in the hospital. Accordingly, she

along with her brother Nagnath and sister Sunanda had gone to Government Hospital, Nanded. They met Komal, however, she did not talk. Thereafter, about 4 days, Komal expired. Police did not record her statement.

In cross, she stated that when she had been to the hospital, at that time, Medical Officer informed that condition of Komal was critical.

15. PW-6- Investigating Officer, Sharad Subhash Mare has described the steps taken by him during investigation. He has stated that on 20.07.2019, when he was attached to Kuntur Police Station, he was assigned the investigation of Crime No.107/2019. He was handed over the statement of the victim on the basis of which crime was registered. He visited the spot of incident and prepared the spot panchanama (Exhibit-25). At that time he had seized burnt pieces of Saree, a match box and a plastic can. He had recorded the statement of PW-1 Sanjay (Exhibit P-74). He was shown portion mark "A" of statement of PW-1 Sanjay and portion "A" and "B" of statement of PW-5 Anita. He stated that those were as per their say. He had arrested accused no.1 and prepared the arrest panchanama (Exhibit P-76). He had forwarded the seized articles to Chemical Analyzer on

04.09.2019 (Exhibit P-77).

In cross, he deposed that after the incident deceased Komal was admitted at Rural Hospital, Naigaon. On that day, entry was made in general diary that deceased Komal and accused no.2 Madhav were admitted in the hospital as they had sustained burn injuries and that they were referred to the Government Hospital, Nanded for further treatment. He did not collect documents in relation to the admission and treatment given to the deceased Komal and accused no.2 at Naigaon Hospital. It did not reveal during the investigation that accused no.2 - Madhav had sustained burn injuries while he was attempting to extinguish the fire. He did not conduct investigation as to the cause of injuries sustained by accused no.2 - Madhav. He did not seize any register or its extract from PW-2 Mr. Bayas. He did not send a wireless message to Nanded Rural Police Station for recording the statement of deceased Komal. He did not collect the call details record in respect of the mobile number of sister-in-law of Komal. He did not inquire regarding the wooden log and pipe, which was referred in dying declaration Exhibit-61. He did not seize clothes of the accused no.1. He cannot recollect the date on which PW-4 Pate had handed over the dying declaration (Exhibit-61). He received the dying declaration Exhibit-61 along with covering

letter on 31.07.2019.

16. Law in respect of appreciation of dying declarations is well settled. The principles governing the dying declarations are laid down in the case of ***Paniben (Smt.) Vs. State of Gujarat [(1992) 2 SCC 474]*** as under :-

*"18.... (i) There is neither Rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. MANU/SC/0174/1975MANU/SC/0174/1975 : (1976) 3 SCC 104)*

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav MANU/SC/0118/1985MANU/SC/0118/1985 : (1985) 1 SCC 552; Ramawati Devi v. State of Bihar MANU/SC/0135/1983MANU/SC/0135/1983 : (1983) 1 SCC 211).*

*(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor MANU/SC/0127/1976MANU/SC/0127/1976 : (1976) 3 SCC 618).*

*(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. MANU/SC/0160/1973MANU/SC/0160/1973 : (1974) 4 SCC 264)*

*(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. 1981 Suppl. SCC 25)*

*(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. MANU/SC/0207/1981MANU/SC/0207/1981 : (1981) 2 SCC 654)*

*(vii) Merely because a dying declaration does not contain the details*

*as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu 1980 Suppl. SCC 455)*

*(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar MANU/SC/0269/1979MANU/SC/0269/1979 : 1980 Suppl. SCC 769).*

*(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. MANU/SC/0334/1988MANU/SC/0334/1988 : 1988 Suppl. SCC 152).*

*(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan MANU/SC/0565/1989MANU/SC/0565/1989 : (1989) 3 SCC 390)."*

17. The Apex Court in the case of ***Uttam Vs. The State of Maharashtra [(2022) 8 SCC 576]*** by relying on aforesaid principles observed that :-

*"15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion."*

18. On applying the aforesaid ratio to the facts of the present case, we are of the view that there are material inconsistencies in the dying declarations Exhibit-47 and Exhibit-61. Therefore, they are not reliable. If we compare both the dying declarations, there are glaring infirmities in both the dying declarations. On evaluation of the evidence adduced by the prosecution, it appears that these dying declarations cannot be said to be voluntary, truthful and hence would not inspire confidence of the Court for the following reasons:-

There is variance in two dying declarations. (i) In the first dying declaration, the incident according to the deceased arose because of the call of her sister-in-law and (ii) in the second dying declaration, the incident had occurred at 5.00 a.m., when her husband assaulted her as she did not wake up and she did not work. (iii) PW-2 in his cross examination deposed that movement of Komal was blink, Medical Officer did not put questions to her and the deceased was whining, (iv) Further in his cross-examination, it has come that he had put the questions and deceased replied to them but the statement is not recorded in question-answer form, (v) PW-2 has admitted that the dying declaration is not recorded in his handwriting, (vi) The one in whose handwriting the dying

declaration was recorded is not examined, (vii) PW-2 Mr. Bayas stated that before recording dying declaration, he did not put any questions to the deceased Komal for checking her ability to speak and mental condition, (viii) He has admitted that the toe impression of deceased Komal was not attested by him, (ix) PW-4 has also not stated anything regarding the mental fitness and orientation of deceased Komal. In chief, PW-4 has stated that Medical Officer was throughout present while recording the dying declarations, but in his cross, he has deposed that the doctor was standing outside while he was recording the dying declaration. (x) No written requisition was given by PW-2 and PW-4 to the doctor for recording the dying declarations. (xi) PW-4 has stated that before recording the statement, he had asked the relatives of the patient and policemen to leave the ward, PW-2 had also asked the relatives of deceased Komal to leave the ward at the time of recording of dying declaration. Thus, possibility of tutoring cannot be ruled out.

19. The deceased Komal had sustained 96% burn injuries and the doctor had also stated that her general condition was poor and and it is noted in the medical papers that the patient was un-cooperative. In such state, the lengthy dying declaration is highly impossible, when all the witnesses deposed that patient was groaning

and whining and her movement was blink, which means that her condition was serious and she was in pains. The medical papers and the statement of the doctor shows that she was given Cefsula 1.5 gm and Tramadol, which are sedatives and painkillers. In such condition, there is a doubt about the mental condition of deceased Komal though the doctor had made an endorsement to that effect. In the present case, the administration of Tramadol and its possible effects on the mental condition of the deceased raise serious doubts regarding the voluntariness and reliability of the statement. The Medical Officer has also admitted that condition of patient was a-febrile. He has mentioned in the case papers (Exhibit 59) that she was a-febrile, understanding about the patient is given to her relatives.

These admissions by the Medical Officer coupled with the fact that he was standing outside and he has not made an endorsement about the patient, about her fit mental condition to give statement create further doubt about the dying declarations. Further, Cefsula 1.5 gm and Tramadol which are sedatives and painkillers were administered to the patient. These drugs are bound to affect the mental condition of the deceased. This also raises serious doubt about the voluntariness and reliability of both dying declarations.

20. The evidence of mother of deceased, PW-5 has further created doubt about the truthfulness as she has categorically deposed that she received the message that while cooking, the corner of Komal's saree caught fire and due to that she received the burn injuries. She has also stated that when she visited Komal at Civil Hospital, her condition was critical. PW-1 - Sanjay Aaneraye who reached the spot of incident immediately, has also deposed that Komal was not in a position to speak. These aspects further create doubt about the veracity of both the dying declarations.

21. The medical papers pertaining to the first admission to Government Hospital, Naigaon are not produced on record and in both the dying declarations, deceased Komal states that she was brought to the hospital by neighbours, but the statement of the neighbours was not recorded. Non-production of crucial medical evidence and for non-examination of material witnesses, adverse inference under Section 114(g) of Evidence Act needs to be drawn against the prosecution and the accused is entitled to benefit of doubt.

22. In absence of corroboration and due to variance in both

the dying declarations, both the dying declarations suffer from serious infirmities and in absence of any corroborative evidence in support of the dying declarations, we find it difficult to sustain the conviction of the accused on the basis of the dying declarations.

23. In **Uttam (supra)**, it is held that where there are multiple dying declarations which suffer from inconsistencies and infirmities, they cannot, form the sole basis of conviction and would require corroboration. The Court is bound to scrutinize such declarations with caution and ensure that the statement is not a result of tutoring or prompting nor a product of imagination. It is incumbent upon the Court to ascertain, from the evidence on record, that the deceased was in a fit state of mind at the time of making the declaration, and also, the person recording the dying declaration must be satisfied as to such mental fitness. Any lacunae or procedural irregularity in recording the dying declaration casts a serious doubt on its reliability, and in such circumstances, the benefit of doubt must be given to the accused.

24. In **Shahji (supra)**, it is held that procedural lapses in recording dying declaration and non-examination of material witnesses cast a serious doubt on the prosecution case. The Court

must seek corroboration and in absence thereof, benefit of doubt must be extended to the accused.

25. In *Sampat (supra)*, it is held that a conviction cannot be sustained solely on the basis of doubtful dying declarations. Where there exists any uncertainty regarding the mental fitness of the declarant, such declarations lose their evidentiary reliability. Considering the factual matrix in the said decision, in cases where the deceased had suffered extensive burn injuries such as 98% burns and was injected sedatives, there arises a real possibility of the declarant being in a state of unconsciousness or delusion. The endorsement of the doctor as to the mental fitness of the victim must precede the recording of the statement; failing which, the dying declaration becomes doubtful.

26. In *Ratan (supra)* it is held that when the dying declaration is not recorded in the words of the deceased and suffers from procedural irregularities, no conviction can be based solely thereon and it would be unsafe to rely upon them without independent corroboration. Administration of medications, coupled with the trauma suffered by the deceased, adversely affect the orientation and mental fitness of the victim. The Chemical Analyser's

report indicating presence of kerosene residue on certain articles, by itself, is not sufficient to establish the prosecution case in the absence of reliable and cogent corroborative evidence.

27. In *Sandip Prakash Rathod Vs. The State of Maharashtra*, it is held that a dying declaration, to be made the sole basis of conviction, must inspire full confidence and be free from any doubt or infirmity. Failure of the prosecution to establish or explain any cogent motive for commission of the alleged crime, further weakens its case.

28. In *Malhari Ranoji Warkad Vs. State of Maharashtra*, it is held that conviction cannot be sustained solely on doubtful and inconsistent dying declarations in absence of corroborative evidence.

29. In view of the aforestated reasons, decisions relied upon by the learned A.P.P are not applicable to the facts of the present case.

30. In the result, the following order :-

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and order of conviction dated

27.03.2023 passed by the Additional Sessions Judge, Biloli in Sessions Case No.28/2020 thereby convicting the appellant under Section 302 of the Indian Penal Code, is hereby quashed and set aside.

(iii) The appellant is acquitted of the charge under Section 302 of the Indian Penal Code.

(iv) The appellant be released forthwith, if not required in any other case.

(v) Fine amount, if paid by the appellant, be refunded to him after the Appeal period is over.

(vi) The appellant shall execute bond of Rs. 15,000/- under Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

(vii) Muddemal property be dealt with in accordance with law.

**(VAISHALI PATIL-JADHAV,J.)**

**(NITIN B. SURYAWANSHI,J.)**

*sga*