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2026 INSC 1196

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.118 OF 2018

SAU. KAMALBAI WAMAN PATIL **APPELLANT**

VERSUS

THE STATE OF MAHARASHTRA **RESPONDENT**

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. The appellant questions her conviction by the High Court of Bombay, Bench at Aurangabad[1] for the offence punishable under Section 302 of the Indian Penal Code, 1860[2], as a result of which she has been sentenced to suffer rigorous imprisonment for life and to pay fine of ₹25,000/-, in default, to suffer rigorous imprisonment for one year. By the impugned judgment, the acquittal of the appellant by the Sessions Court has been reversed.

2. The case of the prosecution in brief is that the son of the appellant-Shamkant, A1 was married with one Sunitabai. The

[1] For short, 'the High Court'
[2] For short, 'Penal Code'

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couple was residing with Waman-A2, the father of A1 and Kamalbai-A3, the mother of A1. Jeejabrao, A4 is the younger brother of A1. It was alleged that all the accused were ill-treating Sunitabai on the ground that she was not having any issue from the marriage. There was also demand of dowry followed by physical and mental torture. Despite an earlier understanding between A1 and the family members of Sunitabai, her ill-treatment at the hands of all the accused continued. It was further alleged that on 10.04.2005 at about 10 a.m. in furtherance of their common intention, all the accused persons set Sunitabai on fire. On hearing some commotion, their neighbours had gathered there. Sunitabai was admitted to the Civil Hospital with burn injuries having been taken there by one Vishwas Desle. Her statement was thereafter recorded at 10.30 a.m. wherein she implicated the appellant as having thrown kerosene on her and having set her on fire. Sunitabai underwent treatment and her further statements were recorded by Prakash Wagh, Assistant Sub-Inspector of Police as well as by the Special Executive Magistrate. Ultimately on 15.04.2005, Sunitabai succumbed to her injuries. An offence was, accordingly, registered against all the accused. On completion of investigation, the case was committed to the Sessions Court.

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Charge was framed against A1 to A4 below Exhibit-8 for the offence punishable under Sections 498A, 342, 406 and 302 read with Section 34 of the Penal Code. The accused did not plead guilty and were, thus, tried.

3. To bring home the charge against all the accused, the prosecution examined Dr. Ajit Pathak at Exhibit-29 as PW-1. He was working as Associate Professor at the Civil Hospital. He stated that he had conducted the post-mortem examination of Sunitabai on 15.04.2005. He opined that the victim had suffered 90 % burns and that the cause of death was 'Septicemia due to thermal burns'. The post-mortem report was at Exhibit-27. The father of Sunitabai, Subhash Patil was examined at Exhibit-36 as PW-2. He stated that Sunitabai was his second daughter and that she was married with A1. His daughter had narrated certain incidents of ill-treatment after which a meeting was held between members of both the families. In the said meeting, A1 had given a written assurance that he would not ill-treat his wife. He further stated that on getting information that his daughter had suffered burn injuries, he along with his relatives rushed to village Vinchur. His daughter had been admitted in the Civil Hospital where she stated that A1 and A4 had tied her hands and legs by a rope while the appellant had poured

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kerosene on her person and she was set on fire by A2. He identified the thumb impression of A1 on the stamp paper wherein a written assurance of good treatment was recorded. The same was at Exhibit-37.

4. Govinda Patil was examined as PW-3 below Exhibit-38. He was present at the Police Station where a panchnama was drawn in respect of a newspaper report, stamp paper of Rs.20 as well as a medical certificate of the victim. Prakash Wagh, PW-4 was examined below Exhibit-43. He stated that he was serving as Assistant Sub-Inspector and that on 10.04.2005, he had recorded the statement of the victim at the Civil Hospital. In the said statement, the victim had stated that A1 and A4 had tied her hands and legs while the appellant had poured kerosene on her person. She was set on fire by A2. He obtained the thumb impression of the victim below her statement as well as an endorsement of the Medical Officer who was present when the statement was recorded. The same was at Exhibit-44. In his cross-examination, he admitted that he had not mentioned the time when the statement of the victim was recorded as well as the time when the recording of that statement was complete. He further stated that below the thumb impression of the victim, he had not

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mentioned whether the same was of her left or right hand or of her legs. He further stated that he did not attempt to obtain any signature of some relative or any other person present for identification of the victim's thumb impression.

5. The prosecution then examined Sardar Mansuri, PW-5 below Exhibit-46. He was working as a Senior Clerk at the Tahsil office. On 10.04.2005, after receiving a letter from the Police Station he had recorded the statement of the victim. After the doctor had endorsed that the victim was conscious and in a position to give her statement, he had recorded the same. He obtained the left thumb impression of the victim below the statement after reading it over to her and her admission that it was correct. The said statement was at Exhibit-48. In his cross-examination, he stated that he had not recorded the statement of the victim in question-answer form. He further stated that in the dying declaration at Exhibit-48, it had not been mentioned as to whether the thumb impression was of the left hand or of the left leg. He denied the suggestion that the victim was not conscious and that she had not given any such statement.

6. PW-6, Bhatu Patil was examined at Exhibit-52/C. He was the cousin brother of the victim's father. He stated that on 10.04.2005

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on getting a message that the victim had suffered burn injuries, he along with other relatives had rushed to the Civil Hospital. He stated that according to the victim, the appellant had poured kerosene on her person and she was set on fire by A2.

7. Dr. Prashant Shinde, Medical Officer at the Civil Hospital, was examined as PW-7 below Exhibit-54. He stated that he was on duty on 10.04.2005 when the victim was brought to the hospital by Vishwas Patil. Vishwas Patil has also been referred to as Vishwas Desle. This witness produced the medico-legal case papers at Exhibit-56 wherein the statement of the victim was also recorded. He had started giving treatment to the victim after which her statement was recorded by the Police Officer. When her statement was recorded, the victim was conscious. When the second statement of the victim was recorded by PW-5, he had examined her and had found that she was in a position to give a statement. He identified his signatures on the dying declarations at Exhibits-44 and 48.

8. The Investigating Officer, Jainoddin Shaikh was examined as PW-8 below Exhibit-57. He indicated the manner in which he conducted the investigation which included seizure of various articles and preparation of panchnama. In his cross-examination,

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he stated that during the course of investigation, it was disclosed that Vishwas Patil had extinguished the fire and that he was the first person to have gone to the place of occurrence and had thereafter admitted the victim in hospital. Though he had recorded the statement of Vishwas Patil, he denied the suggestion that in the dying declaration recorded at 1.15 p.m., as there was nothing stated against the accused, the same was not submitted along with the chargesheet.

9. The learned Judge of the Sessions Court considered the entire prosecution evidence. He noted that there was inconsistency in the dying declarations recorded at Exhibits-44, 48 and 56. While in the dying declaration at Exhibit-56, the victim had stated that she was set on fire by the appellant, in the other two dying declarations at Exhibits-44 and 48, it was stated that she was set on fire by her father-in-law, A2. The learned Judge further found that though the victim in her dying declarations had stated that she was admitted in hospital by Vishwas Desle, he had not been examined by the prosecution. On the contrary, the medico-legal case papers at Exhibit-56 showed that the victim was admitted in the hospital by her uncle, PW-6. However, in the deposition of PW-6, he did not state that he had admitted the victim in the Civil

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Hospital. The prosecution had failed to explain the presence of his signature at Exhibit-56. Absence of any neighbours being examined by the prosecution also weighed with the Sessions Court. Though it was the case of the prosecution that the hands and legs of the victim had been tied, no witness was examined to indicate presence of any piece of rope. It was further held that merely on the basis of the stamp paper at Exhibit-37, the offence under Section 498A of the Penal Code could not be proved. In the light of the aforesaid, the learned Judge of the Sessions Court acquitted all the accused of the offence with which they were charged.

10. The State of Maharashtra through the Police Station Officer, being aggrieved by the acquittal of all the accused, challenged the same in appeal. The Division Bench of the High Court was of the view that the dying declaration recorded by PW-7, Dr. Prashant Shinde at Exhibit-56 implicating the appellant appeared to be voluntarily made without the influence of anyone. It further held that as per the defence of the accused, the appellant alone was present inside the house when the incident of burning had taken place and she had failed to explain as to how the victim had suffered burn injuries. The dying declaration at Exhibit-56 was,

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accordingly, accepted as being truthful. The High Court further held that the dying declarations at Exhibits-44 and 48 were not consistent with the initial dying declaration at Exhibit-56. It, therefore, discarded these two dying declarations. On this reasoning, it held that the prosecution had proved beyond reasonable doubt that it was the appellant alone who had poured kerosene on the person of the victim and had set her ablaze. The appellant was, thus, convicted for the offence punishable under Section 302 of the Penal Code. It held that insofar as A1, A2 and A4 were concerned, there was no positive and dependable evidence to connect them with the homicidal death of the victim. Their acquittal by the Sessions Court was upheld. It further held that offence under Sections 498A, 342 and 406 of the Penal Code was not proved against any of the accused. After holding the judgment of acquittal to be illegal and perverse, the appellant was convicted for the offence punishable under Section 302 of the Penal Code. She was, accordingly, sentenced to suffer rigorous imprisonment for life. The appellant, thus, questions her conviction in this appeal.

11. Mr. Dilip Taur, learned counsel for the appellant submitted that the High Court erred in reversing the acquittal of the appellant

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and convicting her for the offence punishable under Section 302 of the Penal Code. It was the case of the prosecution that three dying declarations of the victim had been recorded being Exhibits-56, 44 and 48. The Sessions Court had disbelieved all the dying declarations by holding that the same were not consistent with each other. The finding of the Sessions Court discarding the dying declarations at Exhibits-44 and 48 was upheld. The High Court, however, proceeded to accept the dying declaration at Exhibit-56, ignoring the fact that it was necessary for the prosecution to have corroborated that piece of evidence with some other reliable evidence. The High Court ought to have taken into consideration the fact that the appellant had been acquitted by the Sessions Court and therefore, while reversing her acquittal, it was necessary that the material relied upon was without any doubt. Referring to the deposition of the prosecution witnesses, it was submitted that their evidence was not consistent and the High Court could not have accepted the same while reversing the judgment of acquittal. The learned counsel placed reliance on the decision in **State of Punjab Vs. Parveen Kumar**[3] and submitted that reversal of the

[3] Criminal Appeal No.633/1999 decided on 18.11.2004

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appellant's acquittal was contrary to law. He, therefore, submitted that the judgment of the Sessions Court be restored and the appellant be acquitted.

12. Mr. Raman Yadav, learned counsel for the respondent supported the impugned judgment. He submitted that the High Court was justified in accepting the dying declaration at Exhibit-56 recorded by the Medical Officer as it was voluntary in nature. Cogent reasons had been given for doing so. When this dying declaration was considered along with other evidence including seizure of the incriminating material and report of the Chemical Analyser, the entire material was sufficient to sustain the conviction of the appellant. Moreover, as per the statement of the accused, the appellant was alone at home when the incident occurred and, thus, there was no justifiable reason to interfere with her conviction. He also referred to the relevant prosecution evidence to support the judgment of the High Court. Reliance was placed on the decisions in **Jagbir Singh Vs. State (N.C.T. of Delhi)**[4] and **Rajendra s/o Ramdas Kolhe Vs. State of Maharashtra**[5]**.** He, therefore, submitted that the appeal was liable

[4] 2019 INSC 1000
[5] 2024 INSC 422

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to be dismissed.

13. We have heard the learned counsel for the parties at length. We have also perused the evidence on record. The material documentary evidence in the form of various exhibits has also been looked into. Having given due consideration to the entire prosecution material led on the basis of the charges framed against all the accused coupled with the acquittal of all the accused by the Sessions Court, we find that the reversal of the appellant's acquittal by the High Court was not called for and the judgment under challenge cannot be sustained.

14. Admittedly, all the accused had been charged for committing an offence punishable under Sections 498A, 342, 302 and 406 read with Section 34 of the Penal Code. In this appeal, we are concerned only with the charge under Section 302 read with Section 34 of the Penal Code as all accused were acquitted of the other offences. The relevant charge framed under Section 302 read with Section 34 of the Penal Code against all the accused reads as under:

> "Thirdly, that you accused Nos. 1 to 4 in furtherance of your common intention, at the same date, time and place, did commit the murder of Sunitabai w/o Shamkant @ Dhanraj Patil, intentionally or knowingly causing her death by pouring kerosene on her person and set her to fire and that you all thereby committed an offence

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> punishable under section 302 read with section 34 of the Indian Penal Code and within my cognizance."

The charge indicates that in furtherance of the common intention of all the accused, they had intentionally or knowingly caused her death by pouring kerosene on her person and setting her on fire. The High Court by the impugned judgment maintained the acquittal of A1, A2 and A4 of all the charges but convicted the appellant, A3 alone for the offence punishable under Section 302 of the Penal Code. The legality of this outcome deserves consideration.

15. The High Court has sought to support its conclusion in convicting the appellant alone under Section 302 of the Penal Code by referring to the defence statement of all the accused that when the unfortunate incident occurred, only the appellant, A3 and the victim were present at home. On this basis, the High Court proceeded to hold that since it was admitted by the accused that it was only the appellant, A3 who was with the victim, it was clear that she alone had poured kerosene on the victim and had set her on fire. It is required to be stated that the defence raised by the accused was in response to the charge framed against all of them. The charge was that A1 to A4 in furtherance of their common

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intention, at the same date, time and place had caused the death of the victim by pouring kerosene on her person and setting her on fire, thus, committing an offence punishable under Section 302 read with Section 34 of the Penal Code. There was no independent charge framed under Section 302 of the Penal Code against any of the accused. Hence, to hold that the defence raised by the accused that as the appellant, A3 was alone present at home with the victim was sufficient to convict her under Section 302 of the Penal Code would amount to making out a new accusation with which the appellant was never charged. It would have been a different matter altogether if an independent charge under Section 302 of the Penal Code simplicitor was also framed against the appellant, A3. The case of the prosecution was always that of involvement of all the accused in furtherance of their common intention. Now, convicting only one of them in the absence of any independent charge would definitely be prejudicial to the appellant, in the facts of the present case.

16. We are fortified in this view by the decision of this Court in **Krishna Govind Patil Vs. State of Maharashtra**[6]. Herein, four

[6] 1962 INSC 19

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accused were tried for a murder. The charge against them was that in view of their common grudge against the deceased, they together did away with him. All the four accused were charged under Section 302 read with Section 34 of the Penal Code. They were also charged separately for the substantive offence under Section 302 of the Penal Code. The trial Court acquitted all the accused by giving them the benefit of doubt. Against the acquittal of the accused under Section 302 read with Section 34 of the Penal Code, the State preferred an appeal. However, no appeal was preferred against their acquittal under Section 302 of the Penal Code for which the accused were charged separately. The High Court confirmed the acquittal of three accused. However, with regard to one of the accused, it was held that he had participated in the assault and there was no basis in his plea of private defence. The said accused was, accordingly, convicted under Section 302 read with Section 34 of the Penal Code. His conviction was challenged in this Court. It was argued on behalf of the sole convicted accused that the trial Court having acquitted all the accused under Section 302 read with Section 34 of the Penal Code as well as under Section 302 of the Penal Code, the appeal in the High Court was confined only to the acquittal of the accused under Section 302 read with

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Section 34 of the Penal Code. It was, thus, urged that when three of the four named accused charged under Section 302 read with Section 34 of the Penal Code were acquitted, the Court could not have convicted only the fourth accused on the basis of constructive liability. A Bench of four learned Judges upheld this contention and observed as under:

> "It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the pre-arranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under s. 302, read with s. 34, of the Indian Penal Code, it should come to a definite conclusion that the said person, had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of s. 34 on different situations.
>
> (1) A, B, C and D are charged under s. 302, read with s. 34, of the Indian Penal Code, for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.
>
> (2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.
>
> (3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence.
>
> As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under s. 302, read with s. 34, of the Indian Penal Code, though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration, the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But

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> what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there is such a basis the case will be covered by the third illustration."

17. It was held that while the High Court acquitted three out of the four accused under Section 302 read with Section 34 of the Penal Code, it convicted the fourth accused under Section 302 read with Section 34 of the Penal Code for having committed the offence jointly with the acquitted persons. This was found to be a legally impossible position. When the accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them, the result in law would be the same, that is, it would mean that they did not take part in the offence. The effect of acquittal of the three out of the four accused was that they did not conjointly act with the fourth accused in committing the murder. The fourth accused, therefore, could not have acted conjointly with them. It was, thus, held that on the findings arrived

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at by the High Court, the conviction of the only accused was clearly wrong.

18. In the present case too, we are faced with a similar situation. Of the four accused tried for the charge under Section 302 read with Section 34 of the Penal Code, the acquittal of three out of said four accused was maintained by the High Court. The appellant, A3 alone has been convicted for the substantive offence punishable under Section 302 of the Penal Code, a charge that was never framed against her.

19. Notwithstanding this position, we have independently assessed the evidence on record. The present is a case where there are three dying declarations on record. The Sessions Court discarded all the dying declarations as they were not consistent with each other. The High Court, however, accepted the dying declaration at Exhibit-56 while discarding the other two at Exhibits-44 and 48. In **Jagbir Singh** *(supra),* this Court considered the presence of multiple dying declarations including those that were inconsistent with each other. It was held that each case was required to be decided on its own facts after carefully examining

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the entirety of materials as well as the circumstances surrounding the making of different dying declarations.

20. In our view, the High Court ought to have borne the following legal aspects in mind before accepting the dying declaration at Exhibit-56 as held by this Court in **Abhishek Sharma Vs. State (Govt. of NCT of Delhi)**[7]:

> "9. Having considered various pronouncements of this Court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:
>
> 9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;
>
> 9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;
>
> 9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.
>
> 9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.
>
> 9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.
>
> 9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.
>
> 9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc."

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These principles have also been highlighted in **Rajendra s/o Ramdas Kolhe** *(supra).*

21. It is material to bear in mind that while convicting the appellant under Section 302 of the Penal Code, the High Court disbelieved the dying declarations at Exhibits-44 and 48 as well as the oral statements made by the victim to her father Subhash Patil, PW-2 and Bhatu Patil, PW-6. The High Court has based the conviction of the appellant solely on the deposition of Dr. Prashant Shinde, PW-7 and the statement of the victim as recorded in the medico-legal case papers at Exhibit-56. Thus, the material factor to be considered is whether the statement recorded below Exhibit-56 by Dr. Prashant Shinde is sufficient to overturn the acquittal of the appellant and convict her under Section 302 of the Penal Code.

22. When the examination-in-chief of Dr. Prashant Shinde, PW-7 is perused, he states that on 10.04.2005 one Vishwas Patil had brought the victim at the Civil Hospital. He had recorded the history of the patient and had mentioned the same on the medico-legal case papers. He, thereafter, obtained the thumb impression of the patient thereon. He further states that at about 1.40 p.m. the police had arrived at the Civil Hospital for recording the statement of the victim. After examining her and finding that she

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was conscious and able to give her statement, an endorsement to that effect was put on the police papers. The statement of the victim was thereafter recorded. At its conclusion, the victim was again examined and on noting that she was conscious and able to give her statement, an endorsement on the statement recorded was put (Exhibit-44). This witness further states that at about 2.15 p.m. on the same day, the Special Executive Magistrate, PW-5 had come for recording the patient's statement. After again verifying the status of the patient, her statement (Exhibit-48) was recorded by the Special Executive Magistrate.

23. When the history of the patient as recorded by PW-7 is considered, it is seen that the same was endorsed by one Vishwas Desle. He had brought the patient to the Civil Hospital as stated by PW-7. Pertinently, Vishwas Desle was not examined by the prosecution. In the cross-examination of the Investigating Officer, PW-8, he admitted that during the course of investigation, it was disclosed that Vishwas Patil, who was a Police Patil, had extinguished the fire and he was the first person to go to the house of the accused. He had also admitted the victim in hospital. His statement under Section 161 of the Code of Criminal Procedure,

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1973[8] had been recorded. There is, however, no reason furnished for non-examination of this material witness, especially, when he was the first person to have gone to the house of the accused, extinguished the fire and thereafter, admitted the victim to hospital. This factor weighed with the Sessions Court. The High Court, however, despite acknowledging the fact that Vishwas Patil had gone to the spot of the incident after the victim was burnt and had taken her to the hospital, proceeded to observe that his non-examination did not have any adverse effect on the case of the prosecution. In our view, Vishwas Patil was definitely a material witness since he was the first person to go to the house of the accused, rescue the victim and thereafter bring her to the hospital. Even according to the Medical Officer, PW-7 he was present when the patient's history was noted on the case papers at Exhibit-56.

24. We may, thus, observe that since the High Court found that the dying declarations at Exhibits-44 and 48 were not consistent with the dying declaration at Exhibit-56, it ought to have looked for some corroborative material while accepting the dying declaration at Exhibit-56, especially when the burn injuries were

[8] For short, 'the Code'

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to the extent of 94% as per PW-7. It is here that the examination of Vishwas Desle, who was present when PW-7 noted the patient's history on Exhibit-56 would have been material. He was, however, not examined. Thus, Exhibit-56 without any corroboration cannot be the sole basis to reverse the acquittal of the appellant and thereafter convict her alone.

25. It was the case of the prosecution since inception that all the accused in furtherance of their common intention had caused the death of the victim by pouring kerosene on her person and setting her on fire. The charge framed was under Section 302 read with Section 34 of the Penal Code. In the dying declarations at Exhibits-44 and 48, it was asserted that the victim's husband, A1 and her brother-in-law, A4 had tied her hands and legs by a rope after which the appellant, A3 had poured kerosene on her person and A2 had set her on fire. A similar narration can be found in the dying declaration at Exhibit-48. Both these dying declarations, however, have been discarded by the Sessions Court as well as the High Court. This finding has not been assailed by the prosecution. It was also specifically deposed by PW-2, the victim's father as well as PW-6 that Sunitabai had told them that her hands and legs had been tied by A1 and A4. During the course of investigation, the

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prosecution had seized an empty plastic can, partially burnt cloth pieces and a partially burnt piece of rope. Here, Vishwas Desle would have been a material witness to prove the presence of the burnt piece of rope with which the victim was allegedly tied. The High Court, however, while proceeding to accept the dying declaration at Exhibit-56 did not indicate as to why the case of the prosecution in terms of the charge framed below Exhibit-8 was not liable to be accepted. It is material to note that common intention was attributed to all the accused and they all were charged for the offence punishable under Section 302 with the aid of Section 34 of the Penal Code. However, it is only the appellant, who has been convicted by the High Court under Section 302 of the Penal Code. The appellant's conviction was, therefore, required to be supported by convincing evidence. It also ought to be borne in mind that the victim was stated to be aged about thirty years when the incident took place while the appellant was stated to be aged sixty years. According to the High Court, it was the appellant alone who poured kerosene on the victim and also set her on fire. The difference in the age of the victim and the appellant was also a relevant factor to be considered especially while reversing the appellant's acquittal.

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26. The High Court has attached considerable importance to the absence of any explanation being furnished by the appellant as regards the manner in which the victim suffered burn injuries. This, according to the High Court, was a major factor that worked against the appellant as she was stated to be alone with the victim at home when the incident occurred.

27. The provisions of Section 106 of the Evidence Act, 1872[9] would come into play only after the prosecution discharges its initial burden pointing to the involvement of the concerned accused. It is only when the prosecution has led evidence, which if believed would sustain a conviction that the absence of a plausible explanation by the accused could be a factor against such accused. We may in this regard refer to the decision of a three Judge Bench of this Court in **Anees Vs. The State Govt. of NCT**[10] wherein it was held as under:

> "42. Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.
>
> 43. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to

[9] For short, 'the Act of 1872'
[10] 2024 INSC 368

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> criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.
>
> 44. Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a *prima facie* case is established by such evidence, the onus does not shift to the accused."

In the absence of the initial burden being discharged by the prosecution herein, we are not inclined to accept the reasoning of the High Court in this regard by relying upon Section 106 of the Act of 1872.

28. Another material infirmity in the impugned judgment of the High Court is that after convicting the appellant for the offence punishable under Section 302 of the Penal Code, the appellant was not heard on the quantum of sentence to be imposed upon her. After reversing the appellant's acquittal, the High Court ought to have heard her in this regard as required by Section 386(a) of the Code. The record indicates, however, that the appellant was not heard on the aspect of sentence. This Court in **Ramkrushna**

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Prahllad Dongardive Vs. The State of Maharashtra[11] has considered the aforesaid aspect in detail. However, since we are of the view that the High Court was not justified in reversing the appellant's acquittal, nothing much would turn on this aspect. As the aforesaid position is obvious from the record, it has been referred to.

29. After considering the entire material on record, we are more than satisfied that the Sessions Court was correct in holding that in view of inconsistency in the three dying declarations, the appellant was entitled to the benefit of doubt. The High Court, while considering an appeal against acquittal, ought to have given due consideration to this aspect before proceeding to reverse the judgment of the Sessions Court. The presumption of innocence in favour of the appellant was in fact enhanced by her acquittal by the Sessions Court. The view taken by the Sessions Court could not be said to be either perverse or illegal as held by the High Court. The dying declaration at Exhibit-56 was accepted by the High Court without any corroborating evidence being available. The judgment of the High Court, therefore, cannot be sustained.

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30. For all the aforesaid reasons, the judgment of the High Court passed in Criminal Appeal No.63 of 2008 on 28.09.2017 is quashed. The appellant is acquitted of the offence punishable under Section 302 of the Penal Code. The appellant be set free forthwith, if not required in any other case. The Criminal Appeal is, accordingly, allowed.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
NOVEMBER 5, 2026.