



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPEAL NO. 192 OF 2010**

Smt. Vimalbai W/o Vitthal Dhavne  
Aged about 60 Yrs., Occ. Nil,  
R/o. Deulgaon, Sakarsha,  
Tah. Mehkar, Dist. Buldana. **APPELLANT**

**Versus**

The State of Maharashtra,  
Thr. P.S.O., P.S. Mehkar, Dist. Buldana. **RESPONDENT**

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Mr. R.M. Daga, Advocate a/w Ms. Titiksha Chhajad, Advocate  
for the Appellant.

Mr. N.H. Joshi, APP for the Respondent/State.  
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**CORAM : URMILA JOSHI PHALKE AND  
NANDESH S. DESHPANDE, JJ.**

**RESERVED ON : 08<sup>th</sup> SEPTEMBER, 2025.**

**PRONOUNCED ON : 22<sup>nd</sup> SEPTEMBER 2025.**

**ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)**

1. This Appeal is directed against the judgment and order of sentence passed in Sessions Case No.89/2008 dated

08.03.2010 by Additional Sessions Judge, Buldhana convicting the accused Vimalbai Vitthal Dhavne of the offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment to life and to pay fine Rs.5,000/- in default to suffer simple imprisonment for three months.

**2.** Brief facts of the prosecution case emerges from the Police papers and recorded evidence are as under:

**2(i).** Deceased Mangala daughter of Smt.Anusaya Jagannath Thorat/Informant got married prior to 3 months of her death. After marriage, she resumed cohabitation with the husband Anil, present accused Vimalbai who is her mother-in-law, sister-in-law/Manisha and other family members at Deulgaon Sakarsha. On 03.06.2008, she came to Risod at the house of her mother and disclosed that her mother-in-law and sister-in-law used to harass her by quarrelling with her on petty reasons. It was further disclosed that her husband Anil beat her by demanding Rs.30,000/- from her parents house. She was not ready to resume cohabitation, however she went back on 10.06.2008. On 11.06.2008, the Informant has received phone call at about 01.00 p.m., disclosing that her daughter sustained

burn injuries and admitted in Hospital at Akola. Therefore, they rushed to Akola. The statement of injured Mangala was recorded by the Executive Magistrate. On the basis of the oral report by Anusaya Crime No.46/2008 came to be registered at Janefal Police Station.

**2(ii).** After registration of the crime, the Investigating Officer visited the alleged spot of incident and drawn spot panchnama. He has deputed PW-4/Devanand Bagade for recording the statement. The statement of deceased was also recorded by PW-8-Naib Tahsildar/Sanjay Markal. During treatment, the deceased succumbed to death. On 15.06.2008, her Post Mortem notes were collected. The cause of death was due to 100% burn injuries. The incriminating articles seized at the time of spot panchnama. Clothes of the deceased were forwarded to CA. After completion of the investigation, the charge-sheet was filed against the accused and other co-accused.

**2(iii).** As the offence registered under Section 302 of the IPC, which is exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions.

The charge was framed against the accused vide Exh.46A. The contents of the charge were read over to the accused. She pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution has examined in all 8 witnesses, as follows:

- (i) PW-1 Devidas Yashwant Exh.67 Panch on Spot  
Wankhede- Panchnama.
- (ii) PW-2 Anusaya Jagannath Exh.70 Mother of the  
Thorat deceased and the  
Informant.
- (iii) PW-3 Datta madhukar Sarode Exh.71 ....
- (iv) PW-4 Devanand Somanand Exh.75 PSI who recorded  
Bagade the dying declaration
- (v) PW-5 Balchandra Baburao Exh.78 A.C.P  
Salunke
- (vi) PW-6 Sudhakar Kaluji Ingle Exh.81 Investigating Officer.
- (vii) PW-7 Dr. Pallavi Rajendra Exh.86 Medical Officer.  
Dhawale
- (viii) PW-8 Sanjay Shriram Markal Exh.90 Executive Magistrate  
who recorded dying  
declaration.

**2(iv).** Besides the oral evidence, the prosecution placed reliance on inquest panchnama-Exh.55, requisition to Circle Officer to draw Map-Exh.59, Map-Exh.60, spot panchnama-Exh.68, requisitions to Medical Officer-Exhs.76, 77, 88 & 88-A, Extract of Station Diary-Exh.79, requisition to CA-Exh.84, CA Report-Exh.85, Post Mortem Report-Exh.89, requisition to Tahsildar-Exh.91, requisition to Medical Officer-Exh.92.

**2(v).** All incriminating evidence is put to the accused in order to obtain his explanation. The defence of the accused is that the death of the deceased is due to burn injuries accidentally. In support of the defence, the accused examined DW-1/Vimalbai Bhika Alhat-Exh.100.

**2(vi).** After appreciating the evidence on record and on going through the entire evidence, the learned Additional Sessions Judge, Buldana held the present accused guilty and convicted as aforestated.

**2(vii).** Being aggrieved and dissatisfied with the same, the present Appeal is preferred by the Appellant/accused on the ground that on the basis of inconsistent dying declarations, the

learned Sessions Judge, Buldana convicted the accused. The mental and physical condition of the deceased to give statement or not is also not established by the prosecution. The mother of the deceased has not supported the prosecution case. Thus, on the basis of inconsistent evidence, the accused is convicted.

3. Heard Mr. Daga, learned Counsel for the Appellant/accused, who submitted that the entire case of the prosecution relied upon two dying declarations which are inconsistent in all material particulars. Prior to recording of dying declarations, oral dying declaration is to the extent of accidental injuries caused by her due to falling of kerosene can and catching fire. The first dying declaration recorded by PW-4/Devanand Bagade which shows that, the accused poured kerosene on her person and her husband set her on fire and kerosene can was brought by her sister-in-law, whereas in second dying declaration recorded by PW-8/Naib Tahsildar, she alleges that it was the present accused who poured kerosene on her person and set her ablaze by igniting the match stick.

4. He further submitted that, the conviction can undisputedly be based on dying declarations but before it can

be acted upon the same must be held to have rendered voluntarily. Consistency in the dying declaration is the relevant factor placing full reliance thereupon. In the present case, the deceased herself had taken contradictory and inconsistent stand in two dying declarations.

5. He also submitted that, the law as to the dying declaration is well settled. He also pointed out from the evidence that the dying declarations bears the thumb impression of the deceased. The fact of having ridges of thumb after she sustained 100% burn injuries appear to be doubtful. Moreover, whether she was in a position to give statement by ascertaining her physical as well as mental condition, evidence to that effect is not adduced by the prosecution. He further submitted that, the requirement of the medical endorsement though was not there, but the persons who are recording the dying declarations must satisfy themselves that she is in a fit condition to give statement. In view of that, the accused is entitled for benefit of doubt.

6. In support of his contentions, he placed reliance on following judgments cited below:

*1. Samadhan Dhudhaka Koli Vs. State of Maharashtra, 2009 ALL MR (Cri) 229 (S.C.).*

*2. The State of Maharashtra Vs. Soma Laxman Nikam, 2015 ALL MR (Cri) 3032.*

*3. Datta s/o Tukaram Malwad Vs. The State of Maharashtra, 2014 ALL MR (Cri.) 3967.*

*4. Uttam Vs. State of Maharashtra (2022) 8 SCC 576.*

7. *Per contra*, learned APP submitted that for proving dying declaration recorded by a person, it is not essential requirement of law that the recorder should repeat while deposing before the Court, contents of declaration in the words spoken by the deceased as to the cause of death of the transaction which resulted into death. In other words, the recorder of dying declaration need not depose before the Court in the words spoken by the deceased about the act of the accused which resulted into death.

8. He submitted that, as far as both dying declarations are concerned, consistent as to the act of the accused is



concerned, the death of the deceased is caused within 7 years of marriage in matrimonial house. Though the mother of the deceased turned hostile, her evidence shows that earlier day of the incident i.e., on 10.06.2008, deceased returned to the matrimonial home and on 11.06.2008 the alleged incident has occurred. The disclosure by the deceased to her mother as to the ill-treatment and the dying declarations recorded by the PW-8/Executive Magistrate as well as PW-4/Devanand Bagade are consistent as to the cause of death and the role of the accused in setting her on fire. He submitted that, the certificate by Doctor that makes it fit to make statement not essential requirement in every case. No such format or procedure is provided by law. It is not essential that, in case of 100% burn, the presence of ridges, curves and thumb impression taken on declaration makes the declaration doubtful. It is always depends on the facts as regard whether such skin of the thumb placed upon the dying declaration was also burnt.

9. Here in the present case, the satisfaction by PW-4 and PW-7 to the extent that, the deceased was in a fit condition to make a statement, sufficiently shows that the deceased was in

a fit condition to give statement and the statement is consistent, therefore the prosecution has proved its case beyond reasonable doubt. The death of the deceased is occurred in matrimonial home due to the burn injuries. In view of that, the Appeal being devoid of merits and liable to be dismissed.

10. After hearing both the sides and after giving thoughtful considerations to the submissions made by both the parties, following points arise for our consideration:

- i. Whether the prosecution proves that the death of the deceased is homicidal one ? And
- ii. Whether the accused has poured the kerosene on the person of the deceased and set her ablaze ?

11. To substantiate the contention that the deceased has sustained the burn injuries and succumbed to death due to the said burn injuries, the prosecution mainly placed reliance on the medical evidence i.e. the evidence of PW-7/Dr. Pallavi Rajendra Dhawale and Post Mortem Notes is at Exh. 89. The evidence of PW-7 shows that, on examination of the dead body of the deceased who succumbed to the death on 15.06.2008, she

found 100% burn injuries on her person. The nature of the burn injuries were superficial to deep. All burn injuries were antemortem in nature. The cause of the death is due to burns 100% with shock. Accordingly she prepared Post Mortem Notes/Exh. 89.

**12.** The cross-examination of PW-7 shows that, the brain of burnt Mangala was not impaired due to the burn injuries. Mangala was talking when she was admitted in the hospital. On perusal of the Post Mortem Notes it reveals that she has sustained 100% burns which is divided by Rule 9 i.e. burns on head, neck and face 9%, upper limbs 18%, lower limbs 18% +18%, trunk 18%, back 18% and genital area 1%. Thus, as far as the death of the deceased due to the burn injuries is concerned, is not disputed. The inquest panchnama which is also on record at Exh. 55 also shows that the deceased has sustained the extensive burn injuries.

**13.** It is not in disputed that, the death of the deceased is occurred in her matrimonial home on 11.06.2008 as she sustained the burn injuries. As per the prosecution case, it was the present accused and the other co-accused who in

furtherance of their common intention poured the kerosene on her and set her ablaze. However, the other co-accused Anil who is the husband and accused No.3/Suresh, accused No. 4/Chandrakala, accused No. 5/Manisha, accused No. 6/Satish and Accused No. 7/Sunil who are the nearest relatives of husband are acquitted. The present accused is the mother-in-law who convicted of the offence punishable under Section 302 of IPC. To substantiate the allegation, the prosecution mainly placed reliance on the evidence of PW-2/Anusaya who is the mother of the deceased. But she has not supported the prosecution case and left the loyalty towards the prosecution case.

**14.** Besides her evidence, the prosecution placed reliance on the dying declarations. During her admission in the hospital, two dying declarations were recorded, one by PW-4/Devanand and another by PW-8/Sanjay Markal Naib Tahsildar.

**15.** The evidence of PW-4 shows that he was working as PSI in City Kotwali Police Station on 12.06.2008. The in-charge of Police Station directed him to visit the Government Hospital,

Akola for recording the statement of injured, therefore he visited the burn ward in the Hospital. He requested the Medical Officer on duty in writing to ascertain whether the injured is in a condition to give statement or not. The Medical Officer examined injured Mangala and endorsed that she is in a fit condition to give statement. The requisition letter is at Exh. 76. Thereafter, he introduced himself to the patient and also disclosed to her that he came to record her statement. Accordingly, the injured had stated that on 11.06.2008 she asked her husband to take her to the parental house but he thrown away her clothes back. Thereafter, when she was sleeping, her mother-in-law Vimal i.e. the present accused poured kerosene on her person and her husband Anil set her ablaze by match stick. The kerosene can was brought by her sister-in-law Manisha and handed over to her mother-in-law and her bother-in-law Sunil closed the door. He recorded the statement as per her narration. Again Medical Officer examined her and gave endorsement. He read over the contents of the statement to the injured and obtained her thumb impression. The said statement is at Exh.77.

16. The cross-examination of this witness discloses that the relatives of the injured were near to her, when this witness visited the burn ward. She has sustained the burn injuries to the extent of 99%. This witness denied the suggestion that her mother Anusaya and one Shankar were present near her when her statement was recorded.

17. Another dying declaration is recorded by PW-8/Sanjay Markal who was serving as an Executive Magistrate as well as Naib Tahsildar. As per her evidence, on 11.06.2008 at about 04.00 p.m., the Constable from City Kotwali Police Station, Akola, approached to him at about 04.00 p.m., and handed over him requisition to record the statement of injured Mangala which is at Exh. 91. Thereafter, he visited the burn ward of General Hospital, Akola, wherein PW-7/Dr. Pallavi Dhawale was on duty. He requested her to examine the patient and ascertain whether she is conscious or not for giving the statement. The said requisition is at Exh.92. Thereafter, the Medical Officer examined her and endorsed on Exh.87 that burnt Mangala is conscious and fit for dying declaration. Thereafter, he recorded the dying declaration, on

satisfying himself that injured is in a condition to give the statement. He made enquiry with her which was reproduced into writing. The said dying declaration is at Exh. 93. He has obtained the thumb impression on her dying declaration. He denied that, the relatives of the patient were present when he approached to the injured for recording her statement. Rest of the cross-examination is in the denial form. He admitted that, there is no reference on Exh. 93 that he introduced himself and also informed that he came for recording the statement.

**18.** PW-7/Dr. Pallavi Dhawale in whose presence both the dying declarations are recorded. As per her evidence, on 11.06.2008 at about 04.00 p.m., the Executive Magistrate approached to her. On his request, she examined the injured and gave endorsement that she is in a fit condition to give a statement. Accordingly, she examined and gave endorsement which is at Exh. 87. The Executive Magistrate recorded the statement in her presence. On completion of the statement, she again examined the patient and found her in a fit condition. The subsequent endorsement is at Exh. 87-A. Her further evidence shows that, on 12.06.2008 PW-5/Bhalchandra approached to

her for recording the statement. On his request, she examined the patient and gave endorsement that she is in a fit condition to give a statement. In her presence the statement was recorded. Her endorsements on the said statements are at Exhs. 88 and 88-A. Though she is cross-examined at length, as far as her mental and physical condition is concerned, her evidence is not shattered during the cross-examination.

**19.** Besides the evidence of these two witnesses, the prosecution has adduced the evidence of PW-1/Devidas Wankhede who acted as a Panch on spot panchnama. As per his evidence, in his presence from the spot one kerosene can, wet quilts, hair pin, one pen, etc., were seized from the place of incident. The spot panchanama is at Exh. 68. He has also identified the articles which were seized from the spot.

**20.** During his cross-examination, it came on record that this witness is neighbour of the co-accused Anil. There are other adjoining houses near the incident. He further admits, that the accused Satish climbed on the roof of the house in which the incident took place. Accused Satish entered in the second room and by removing the tin of the roof he entered inside and open



the door. It further came in his evidence that, the accused Satish and all other villagers extinguished the fire when they saw Mangala caught by fire.

**21.** PW-2/Anusaya Thorat and PW-3/Datta Sarode have not supported the prosecution case. As per their evidence deceased sustained the burn injuries accidentally. They have also denied the allegation of ill-treatment which was raised initially.

**22.** PW-5/Balchandra Salunkhe who was serving as a API, has deposed that he received a message as to the incident, therefore taking entry into the station diary he proceeded to the spot of incident and drawn the spot panchnama. He has also recorded the report lodged by the PW-2/Anusaya. PW-6/Sudhakar Ingle who has carried out the part investigation. As per his evidence he has forwarded the seized muddemal to F.S.L. Nagpur on 24.06.2008. The requisition letter is at Exh.85.

**23.** In support of the defence of the accused that the deceased has sustained the burn injuries accidentally. Defence

witness Vimalbai Bhika Alhat was examined vide Exh.100. As per her evidence, the deceased has sustained the burn injuries accidentally. She testified that in her presence PW-2/Anusaya enquired with the deceased and the deceased disclosed that the kerosene can kept on wooden plank fell on her person when she was lightening the hearth, and therefore, she burnt.

**24.** On the basis of the above oral as well as documentary evidence, the prosecution has proved its case beyond reasonable doubt. As far as the nature of the death is concerned, it is due to the burn injuries. Two stories were put forward that, the deceased died accidentally, whereas as per the prosecution, the accused has caused the death of the deceased. The CA Report at Exh.85 on record shows that, the seized articles which were forwarded shows detection of kerosene residues found on partly burnt cloth pieces which are at Exhs. 1 and 2. Thus, the entire case of the prosecution is rested upon the dying declarations.

**25.** As per the submissions of the learned Counsel for the Appellant that two dying declarations are recorded which are inconsistent on material particulars, and therefore, not to be

acted upon. It is submitted that, the evidence of the Medical Officer and PW-4/Devananad and PW-8/Sanjay Markal, nowhere discloses that the deceased was in a fit condition to give statement as they have not recorded their satisfaction. It is further submitted that, though the Medical Officer gave an endorsement but she has not stated about the mental state of mind of the deceased. Therefore, the dying declarations deserve to be discarded.

**26.** *Per contra*, learned APP submitted that, as far as the role of the present Appellant/accused of setting her ablaze is consistent, and therefore, the Appeal being devoid of merits liable to be dismissed.

**27.** Whether the dying declarations recorded by PW-4/Devanand and PW-8/Sanjay Markal are inspiring the confidence or not is to be seen in the light of well settled legal position. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak

only the truth. Great caution must be exercised in considering the weight to be given to this type of evidence on account of the existence of many circumstances which may effect their truth.

28. The Hon'ble Apex Court in the case of *Laxman Vs. State of Maharashtra, 2002 ALL MR (Cri) 2259 SC*, held that normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. It is further held that, what evidential value or weight has to be attached to such statement necessarily depends upon the facts and circumstances of each particular case. What is essentially required is that the person who records dying declaration must

be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution therefore the voluntary and truthful nature of the declaration can be established otherwise.

29. In the case of *Krishan and Ors. Vs. State of Haryana*, **2013 ALL MR (Cri.) 727**, the Hon'ble Apex Court has held that where the dying declaration is true and correct, the attended circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. But where the dying declaration itself is attended by suspicious circumstances, has not been recorded in accordance with law and settled procedures and practices, then

it may be necessary for the Court to look for corroboration of the same.

30. In *Uttam Vs. State of Maharashtra* (supra), relied upon by the learned Counsel for the Appellant/accused, wherein the Hon'ble Apex Court laid down the principles which needs to be kept in mind while considering the dying declaration, which is reproduced as under;

*“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.*

*(iii) The Supreme 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.*

*(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.*

*(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.*

*(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.*

*(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.*

*(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.*

*(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 eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.*

*(x) Where the prosecution version differs from the version as given in the dying declaration, the said dying declaration cannot be acted upon.”*

**31.** Thus, it is a settled law that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that, her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32(1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from the Doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that, if the prosecution solely depends upon the dying declaration, the normal rule is that the Court must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the

deceased by cross-examination.

**32.** The law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

**33.** In the present case, the prosecution has laid the evidence of PW-4/Devanand Bagade vide Exh. 75 and PW-8/Sanjay Markal Executive Magistrate vide Exh.90. As per their evidence they both have approached to the Medical Officer and obtained the medical endorsement from the Medical Officer regarding the fitness of the declarant and recorded the dying declarations.

**34.** The cross-examination of PW-4 shows that, before



he approached to the injured in a burn ward, the relatives of the injured were near to her. This fact is further substantiated by PW-2/Anusaya who stated that, she alongwith PW-3/Datta and one Shankar reached to the Hospital and communicated with injured. Injured disclosed to them that she sustained the burn injuries on account of falling of kerosene can and catching of fire. But there was altercation between co-accused Anil and Shankar. Therefore, Shankar and other relatives got annoyed and Shankar tutored the deceased Mangala in her presence to tell the name of accused Anil and others, and therefore, the statement of the deceased Mangala was recorded. Thus, the theory of tutoring of Mangala prior to recording of her dying declarations is brought on record. The cross-examination of PW-4 admitting the presence of the relatives near the injured prior to recording her dying declarations, the possibility of tutoring cannot be ruled out.

**35.** While testing the evidential value of the said dying declarations, the learned Counsel for the Appellant/accused submitted that, the dying declarations recorded by PW-4 and PW-8 are not consistent with each other, and therefore, deserves

to be discarded. He invited our attention towards the dying declaration recorded by PW-4, wherein the deceased had attributed the role to the present accused as well as to the other co-accused. As per her first dying declaration, the present accused brought the kerosene can and poured on her person and her husband Anil set her ablaze with a match stick. Her sister-in-law brought the said kerosene can and handed over to the present accused and her brother-in-law closed the door, whereas her second dying declaration recorded by PW-8 attributes role only to the present accused stating that the present accused poured kerosene on her and set her ablaze. He submitted that, when two conflicting dying declarations are there, as a rule of prudence corroboration is required.

36. In support of his contention, he placed reliance on *Samadhan Dhudhaka Koli* (supra), wherein in para Nos. 15 and 16 by referring the earlier judgments it is held that, conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance

thereupon. Here in the present case, deceased herself taken contradictory and inconsistent stand in different dying declarations. Therefore, corroboration to such dying declarations is required.

37. He also placed reliance on *Uttam Vs. State of Maharashtra* (supra), wherein the Hon'ble Apex Court considered the aspect of multiple dying declarations and held that, if a dying declaration suffers from some infirmity, it cannot be the sole basis for convicting the accused. In those circumstances, the court must step back and consider whether the cumulative factors in a case make it difficult to rely upon the said dying declaration. It is further held that, the dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording the dying declaration-be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The court must satisfy itself that the person making the dying declaration was conscious and fit to make statement for which purposes not only the evidence of

persons recording the dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration.

38. Learned APP submitted that, it is not a requirement of law that, recorder of dying declaration while deposing before the Court should repeat contents of dying declaration in words spoken by deceased as to the cause of her death. In support of his contention, he placed reliance on Full Bench judgment of this Court in *Ramesh Kamble Vs State of Maharashtra*.

39. The another issue raised by the learned Counsel for the Appellant/accused that, the deceased has sustained 100% burn injuries. It is highly improbable and impossible that she would be in a position to put her thumb mark and thumb mark would appear with its ridges and curves.

40. In support of his contention he placed reliance in the case of *The State of Maharashtra Vs. Soma Laxman Nikam* (supra). This aspect is also considered by the Hon'ble Apex Court in the case of *State of Madhya Pradesh Vs. Dal Singh & Ors., 2013 CRI. L.J. 2983* relied by learned APP and observed

that, question whether presence of ridges and curves in thumb impression taken on declaration made by the declarant who was almost 100% burnt makes the declaration doubtful depends upon fact as regards whether the skin of the thumb that was placed upon the dying declaration was also burnt. Even in case of such burns in the body, the skin of the small part of the body i.e. the thumb may remain intact. Here in the present case, admittedly, there is no evidence on record to show that the skin of the thumb was also burnt, and therefore, this submission of the learned Counsel for the Appellant/accused is not acceptable.

**41.** In the present case, as already observed that the prosecution is relied upon two dying declarations. Both the dying declarations are inconsistent as far as the role attributed to the present accused is concerned. In one dying declaration she assigns the role to the present accused to the extent of pouring of the kerosene, whereas in another dying declaration she assigns the role of pouring the kerosene as well as setting her ablaze which are found to be contradictory.

**42.** Having considered various pronouncements, the Hon'ble Apex Court laid down following principles for a Court

to consider when dealing with a case involving multiple dying declarations. The said principles are reproduced by the Hon'ble Apex Court in the case of ***Abhishekh Sharma Vs. State (Govt. of NCT of Delhi) MANU SC 1159/2023*** which are as follows.

*“(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;*

*(2) All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;*

*(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 the dying declarations.*

*(4) The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*

*(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 to the case proceeds further.*

*(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.*

*(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 possibility of tutoring by relatives, etc.”*

**43.** A perusal of the dying declarations as stated above shows that, it was recorded by Police Officer as well as by

Executive Magistrate which are inconsistent on material particulars i.e. as far as the role of the present accused is concerned. For the basis of conviction, if the dying declaration is true, reliable and has been recorded in accordance with establish practice and principles it can be acted upon. By applying the test to accept the said dying declaration, admittedly both the dying declarations are not consistent as far as the role of the present accused is concerned. Thus, the law is quite clear that, if the dying declaration is absolutely unacceptable and nothing is brought on record that the deceased was in such a condition, he or she had not been made a dying declaration to a witness, there is no justification but discard the same.

**44.** In the present case, PW-4 and PW-8 who recorded the dying declarations are not consistent. Their evidence nowhere states that they have satisfied themselves as to the physical and mental fitness of the deceased to give a statement. The evidence of PW-7/Dr. Pallavi Dhawale also silent as far as her mental condition is concerned. PW-2/Anusaya, the mother of the deceased has not supported the case that she died

homicidal death. Her evidence shows that, the disclosure by the deceased which can be treated as oral dying declaration is to the extent that she sustained burn injuries accidentally. Her evidence further shows that, it was her relative on whose instances the deceased has made a statement against the accused. The circumstance that the presence of the relative near to the deceased prior to recording of dying declarations, therefore the dying declarations may result of tutoring and that possibility cannot be ruled out. The dying declarations raise the question as to its reliability. Additionally, besides the dying declarations there is no evidence on record to point out the guilt of the accused. It is an established principle that, a dying declaration, if it is free of tutoring, prompting can form the sole basis of conviction. However, having perused the record minutely, we do not find any evidence by which we may uphold the judgment of the Trial Court. For example, nothing on record indicates that the deceased was ill-treated by the present accused and out of such ill-treatment she set her on fire. The evidence of PW-8 nowhere shows that it was read over to her after recording the same and she accepted the contents. There is no endorsement also that the statement was read over to her and



the contents are accepted by her. Admittedly, the dying declarations cannot be rejected merely because the same is not read over to the declarant and the declarant admitting whom to have been correctly recorded.

**45.** In the light of the above discussion, we are satisfied that the dying declarations are not recorded as per the legal provisions and creates doubt. The dying declarations are also not consistent, therefore, we are not inclined to accept the said dying declarations by placing reliance upon the same. We are, therefore, of the opinion that the prosecution failed to prove that the evidence of dying declarations is cogent, reliable and trustworthy. Therefore, further corroboration is required. In our considered opinion, the Trial Court failed to appreciate the evidence and convicted the accused. The plea of the accused is succeeded as the accused has shown that the dying declarations are inconsistent, and therefore, corroboration was required. The veracity of the oral dying declaration is also doubtful.

**46.** We are, therefore, of the opinion that the Appellant/accused succeeds. In view of that, the Appeal deserves to be allowed. Accordingly, we proceed to pass the following order:

**ORDER**

- i. The Criminal Appeal is **allowed**.
  - ii. The judgment and order of sentence passed in Sessions Trial No. 89/2008 passed by the Additional Sessions Judge, Buldana, is hereby quashed and set aside.
  - iii. The Appellant/accused is acquitted from the charges punishable under Section 302 of the Indian Penal Code and bail bonds stand discharged.
  - iv. R & P be sent to the Trial Court.
47. Pending application/s, if any, shall stand disposed of accordingly.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI PHALKE, J.)