

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 852 OF 2019

WITH

INTERIM APPLICATION (ST) NO. 11514 OF 2026

Smt. Meenabai Lobaji Gaikwad . Appellant

Age: 61 years, Occupation- nil .

Residing at - Opposite Pink City,
Vinod Kalte Brick Kiln, Wakad,
Pune.

Presently Lodged at: Yerawada
Central Jail

V/S.

State of Maharashtra . Respondent

(through Hinjewadi Police Station) .

Adv. Sachin Salunke for Appellant.

Dr. Dhanlakshi S. Krishnaiyyer, APP for Respondent-State.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT,
JJ.**

RESERVED ON : 12th JUNE 2026

PRONOUNCED ON : 23rd JUNE 2026

JUDGMENT: (PER SHREERAM V. SHIRSAT, J.)

1. The present Appeal has been filed challenging the impugned Judgment and Order dated 28.11.2016 passed by the Court of Sessions, Pune in Sessions Case No. 666/2013, whereby the Appellant

has been convicted under Section 235(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and has been sentenced to undergo imprisonment for life and pay a fine of Rs. 10,000/- and in default to undergo Rigorous Imprisonment for 6 months.

2. BRIEF FACTS OF THE PROSECUTIONS CASE

a. It is the case of the Prosecution that Meenabai Gaikwad, the Appellant herein is the mother-in-law of the deceased Savitra Vijay Gaikwad. Savitra was married to Vijay Gaikwad (son of the Appellant) in June 2006. The Appellant came to reside with them four months prior to the incident. It is further the case of the prosecution that the Appellant used to pick up quarrels with the deceased.

b. It is further the case that the Appellant had mortgaged her gold ornaments with one jeweller (Marwadi) and the Appellant often used to demand money from the deceased for releasing her mortgaged ornaments. It is further the case that since the deceased and her husband had no money and they were indebted, they could not fulfill the persistent demand. It is further the case that the deceased would assure the accused/Appellant that whenever she had

money, she would try to release the ornaments, however the Appellant used to often ill-treat her on this count.

c. It is further the case that on 17.04.2013, when the deceased was doing household work, the Appellant again asked her for money to release her gold ornaments and also threatened the deceased in case the amount was not given to her to which the deceased tried to convince the Appellant that she would release the ornaments which were mortgaged, whenever she had the money to do so. However, it is the case that the Appellant, in a state of fury, brought a can of kerosene and poured it on the deceased and set her ablaze and then left the house. It is further the case that the neighbours then rushed to the spot of the incident and telephoned the husband of the deceased. It is further the case that the husband of the deceased came home immediately and extinguished the fire by pouring water on her and took the deceased to YCM hospital and from there she was subsequently shifted to Sassoon hospital.

d. It is further the case of the prosecution that when the deceased was admitted in the hospital, her statement came to be recorded in which she has stated about the quarrel with

the Appellant who then also poured kerosene on her and set her ablaze.

e. It is further stated that her statement was then treated as an F.I.R which came to be registered on 17.04.2013 under section 307 of the IPC. She then succumbed to burn injuries on 21.04.2013. The offence was accordingly registered under section 302 IPC.

f. After completing the investigation, the police filed a charge sheet and the matter was committed to the Sessions Court, Pune for trial. Charges came to be framed against the accused under Section 302 IPC, to which the accused/Appellant pleaded not guilty and claimed to be tried.

3. To bring home the guilt of the accused-Appellant, the Prosecution examined 10 witnesses (PW1 to PW10) :

PW- 1	Sakharam Tukaram Bokefode	Panch witness to spot panchanama
PW-2	Ramesh Tulshiram Jagtap	Maternal uncle of the deceased.
PW-3	Dr. Aaditya Ravindra Kunte	Doctor in whose presence the dying declaration was recorded.
PW 4	Ghisulal Bansilal Soni	Jeweller with whom the jewellery was mortgaged.
PW 5	Subhash Aba Jadhav	API who recorded the Dying Declaration.

PW 6	Vinod Subhash Kalate	Employer of the husband of the deceased.
PW 7	Dr. Vijay Rathod	Doctor who conducted post-mortem.
PW 8	Nilesh Jagdale	Investigating Officer
PW 9	Vijay Gaikwad	Husband of the deceased
PW 10	P.I. Jagdale	Investigating Officer

4. After hearing both sides and upon appreciation of the evidence on record, the Court of Sessions, Pune vide Judgment and Order dated 28.11.2016, was pleased to convict the Appellant for the offence punishable under Section 302 of the IPC and sentenced her to undergo life imprisonment and to pay a fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for six months.

5. Aggrieved by the judgment and order of conviction passed by the Ld. Sessions Judge, Pune in Sessions Case No. 666/13, dated 28.11.2016, the Appellant has approached this Hon'ble Court by way of the present Appeal.

6. Heard Ld. Adv. Sachin Salunke for the Appellant and Dr. Dhanlakshi S. Krishnaiyyer, APP for Respondent-state.

7. The Ld. Counsel for the Appellant submitted that the Appellant has been falsely implicated and there is no cogent evidence to sustain the conviction. He further submitted that the Dying Declaration

cannot be believed as it has been recorded by the police officer and not by the Special Executive Magistrate (SEM). He further submitted that the Dying Declaration has not been recorded in a question-answer format and therefore no credence can be placed in such a Dying Declaration. The Ld. Counsel further submitted that the relations of the deceased with the Appellant were cordial and the death had occurred because of an explosion of stove and that the Appellant had neither poured kerosene nor had lit the matchstick. He further submitted that the Appellant is a lady aged about 68 years and she is in custody for over 13 years and therefore some leniency be shown.

8. *Per Contra* the Ld. APP submitted that there is nothing to disbelieve the witnesses who have deposed in this case. She further submitted that the Dying Declaration is believable and therefore conviction can be based on the same without looking for any corroboration. She further submitted that the Dying Declaration is corroborated by two witnesses- P.W. 2 and P.W. 6 and therefore there is consistency throughout. The Ld. APP therefore submitted, that a young lady aged 24 years has lost her life and therefore no leniency be shown to the Appellant.

9. The Ld. Counsel for the Appellant has relied upon the following judgment:

Piraji S/O Madhav Kumbhargave v/s The State Of Maharashtra¹.

10. The Ld. APP has relied upon the following judgments:

- ***Purshottam Chopra and Another v/s State (Govt. Of Nct Delhi)²***
- ***Laxman v/s State Of Maharashtra³***
- ***Trimukh Maroti Kirkan v/s State Of Maharashtra⁴.***
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11. The entire case of the prosecution hinges on the Dying Declaration recorded by P.W. 5 in the presence of P.W. 3 and also made to P.W. 2, the maternal uncle of the deceased and P.W. 6, the owner of the brick kiln. It will therefore be relevant to assess and marshal the evidence of these witnesses in order to come to a conclusion whether the Dying Declaration can be believed or it has to be discarded.

12. Before advertng to the evidence that has come on record, it will be advantageous to refer to the latest judgments of this Court as well as of Hon'ble Apex Court on this issue.

1 BHC Cr.A.327-2023.

2 AIR OnLine 2020 SC 15.

3 (2002) 6 SCC 710.

4 (2006) 10 SCC 681.

13. This Court in a recent judgment of ***Manoj Ramaji Chvare v/s State of Maharashtra in Criminal Appeal No. 108 of 2020*** had an occasion to deal with the issue of dying declaration and this Court had referred to the judgment of the Hon'ble Supreme Court in the case of ***Irfan @ Naka v/s The State of Uttar Pradesh in Criminal Appeal Nos. 825-826 of 2022***, wherein it was observed as under:

“15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

... ..

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

- (v) Whether the statement was not recorded properly?
- (vi) Whether, the dying declarant had opportunity to clearly observe the incident?
- (vii) Whether, the dying declaration has been consistent throughout?
- (viii) Whether, the dying declaration in itself is a manifestation /fiction of the dying person's imagination of what he thinks transpired?
- (ix) Whether, the dying declaration was itself voluntary?
- (x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?
- (xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration? the person making the statement was in expectation of death?
- (ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"
- (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?
- (iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?
- (v) Whether the statement was not recorded properly?
- (vi) Whether, the dying declarant had opportunity to clearly observe the incident?
- (vii) Whether, the dying declaration has been consistent throughout?
- (viii) Whether, the dying declaration in itself is a manifestation /fiction of the dying person's imagination of what he thinks transpired?
- (ix) Whether, the dying declaration was itself voluntary?
- (x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?
- (xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?"

14. This Court had also considered the judgment of **Navin Bhimrao Bansode v/s The State of Maharashtra in Criminal Appeal No. 613 of 2014** wherein it has been observed as under:

“19. So far as the dying declaration is concerned the law is well settled. The principle on which the dying declaration is admitted in evidence is based on the legal maxim “Nemo Moriturus Praesumitur Mentire” i.e. the man will not meet his maker with a lie in his mouth. It is based on the principle that in the face of death, all the worldly aspirations of a man do not exist. It is unlikely that a person who is on death bed would falsely implicate an innocent. In the case of **“Paniben Vs. State of Gujarat; AIR 1992 SUPREME COURT 1817”**, the principles governing the dying declaration are enumerated as under:

“It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring-corroboration is merely a rule of prudence. The Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Mannu Raja v. State of U.P.* (1976) 2 SCR 764) (AIR 1976 SC 2199).

(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*, AIR 1985 SC 416; *Ramavati Devi v. State of Bihar*, AIR 1983 SC 164).

(iii) The 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. (*Ram Chandra Reddy v. Public Prosecutor*, AIR 1976 SC 1994).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (*Rasheed Beg v. State of Madhya Pradesh*, (1974) 4 SCC 264 : (AIR 1974 SC 332).

(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.*, AIR 1982 SC 1021).

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (*Ram Manorath v. State of U.P.*, 1981 SCC (CrL.) 581).

.....

“21. The law on the dying declaration is that if the Court is satisfied that the dying declaration is true and made

voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that the dying declaration cannot be relied upon without corroboration. When the dying declaration is suspicious, it should not be relied upon without having corroborative evidence. Court has to scrutinise the dying declaration carefully and must ensure that the dying declaration is not the result of tutoring, prompting or a product of imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself guarantee of its veracity. When the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction.

....

24.The Hon'ble Supreme Court in the case of "Raju Devade Vs. State of Maharashtra – AIR 2016 AIR (SC) 3209 has observed as under :

"27. This Court had clearly laid down that the each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is more than one dying declaration, it is the duty of the court to consider the each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs."

15. On the basis of the principles laid down by the Hon'ble Apex Court and before analysing the evidence threadbare, it will be advantageous to narrate the depositions of the witnesses with respect to the Dying Declaration. In the array of witnesses examined by the prosecution, P.W. 2, P.W. 3, P.W. 5 and P.W. 6 would be the relevant witnesses who would throw light on the Dying Declaration.

16. P.W. 2, is the uncle of the deceased who has deposed that the

deceased was residing with her husband and parents-in-law. He has deposed that on 17.04.2013, he received a phone call from Ram Dupargande and he was informed that Savitra has sustained burn injuries and was admitted to the Sassoon General Hospital and that he should immediately come to Sassoon General Hospital. He has further deposed that he went to Sassoon Hospital where he saw burn injuries on the person of Savitra. He has further deposed that he asked Savitra as to how she sustained injuries, to which she said that *“her mother-in-law quarrelled with her by demanding money to reduce the mortgage in respect of gold ornaments. Her mother-in-law often used to demand money and used to pick quarrels with her. The deceased told her mother-in-law that she would pay the money whenever she had money with her. The deceased told him that the mother-in-law of Savitra killed her by pouring kerosene on her person and lighting a matchstick.”*

17. This witness was thoroughly cross-examined and the cross-examination was on the point that the Appellant was not residing with Savitra, which has been denied by this witness. This witness has further answered in the cross-examination that the Appellant was residing with her until the incident occurred. In the cross-examination, it was tried to be suggested that in the hospital the

relatives also spoke to the deceased, however, he has denied the suggestion that the deceased was tutored to give the statement that her mother-in-law poured kerosene on her and set her ablaze. The suggestion given to this witness that due to the explosion of the stove while cooking food, the deceased came in contact with fire and therefore she sustained burn injuries, was also denied by this witness.

18. P.W.3, Aditya Ravindra Kunte, the surgeon attached to the Sassoon General Hospital, Pune has deposed that Savitra Vijay Gaikwad was admitted in Sassoon General Hospital for burn injuries and he had treated this patient. He has deposed that the said patient sustained 77% burn injuries. He has further deposed that he informed the RMO that the statement of the patient was required to be taken and accordingly an entry was made in the medical papers. He has further deposed that on 17. 04. 2013 at about 10 p.m., one police man had come to the hospital for recording the statement of this patient and therefore he examined the patient and observed that the patient was conscious and well-oriented to time, place and person. He has further deposed that he gave his endorsement along with his signature on the paper and thereafter the police started recording the statement of the said patient in his presence. He has further deposed that the police completed the recording of the statement in his presence and

obtained the thumb mark of the patient in his presence. He also stated that he again examined the patient and observed that she was conscious, well-oriented to time, place and person throughout. He has further deposed that the patient was mentally fit to make a statement. In the cross-examination, he has stated that the history given by the patient was of accidental burns on admission. In his cross-examination, it is clarified that it is true that in the delirium stage, the patient goes into an imaginary state of mind and in such cases, the patient talks irrelevant. He has also stated that on the statement there is no endorsement that the patient is mentally fit to make a statement. He has further deposed that at the foot of the statement there is no endorsement and signature put by him.

19. P.W. 5 Subhash Aba Jadhav, API who recorded the Dying Declaration, has deposed that on 17th April 2013, he received information that Savitra Gaikwad has sustained burn injuries and was admitted to Sassoon General Hospital and he went to Sassoon General Hospital on the same day to Ward No 25. He has further deposed that he saw the patient Savitra Gaikwad in Ward No. 25, Bed No. 10. He has deposed that he met the concerned doctor and disclosed his intention to record the statement of Savitra Gaikwad. He has deposed that he asked the doctor whether the said lady was in a conscious state

of mind to make a statement. The doctor examined her and opined that she was in a conscious state of mind to make a statement. He has further deposed that he obtained the endorsement of the concerned doctor on the statement paper at the beginning of recording of the statement. He has further deposed that thereafter, he started recording the statement of the said lady and asked her name and other things. He has further deposed as follows: *“The victim lady stated that her mother-in-law accused Meenabai Gaikwad said to her that ornaments were mortgaged with one marwadi and Meenabai was constantly demanding money from her to de-mortgage ornaments. Victim lady told Meenabai that she had no money that time and whenever she had money, they would de-mortgage the ornaments, on this count, the accused Meenabai often used to ill-treat her by insulting her. The victim girl further stated that on 17.04.2013, when she was in the house, accused Meenabai was demanding money from her since Meena wanted to de-mortgage the gold ornaments immediately, and in case she did not give money, Meena, who did some bad act. The victim lady said that when she had money she would give it to Meenabai to release said ornaments, however, Meena bai got angry, Meenabai brought can of kerosene, she poured the kerosene on the person of Savitra and set her ablaze. Savitra then shouted, however, Meenabai left home. The neighbours gathered on*

the spot. Her husband was called. Her husband extinguished fire by pouring water on her person.” He has further deposed that he recorded the statement of victim Savitra as per her say which was read over to her and she admitted it to be true and correct and then he obtained left-hand thumb impression and he also signed the statement. He has further deposed that the doctor was present throughout while recording the statement and no other person, including the relatives of the patient were present. He has also deposed that after completing the statement, he again requested the doctor to examine the patient and the doctor after examining the patient, opined that the victim lady was in a conscious state of mind to make a statement. He further deposed that he obtained endorsement as well as signature of the doctor and the doctor also mentioned the time and date of giving endorsement at the beginning and at the end of the statement. The said statement of the deceased was marked as Exh. 29. The said witness was cross-examined and the witness was questioned that the statement of the lady Savitra was not recorded in question and answer format to which he agreed. He was also questioned whether he had personally mentioned the exact time when he started recording the statement and the time when he completed the statement, to which he replied that he had not personally mentioned it. He was also asked as to whether an independent

certificate showing the mental condition of the patient to make a statement was obtained by him, to which he replied that he did not obtain. He was also cross-examined on the point as to whether he had mentioned in the statement that the contents of the statement were read over to the victim lady to which he replied that he had not mentioned so in the statement.

20. P.W. 6 Vinod Subhash Kalate, the employer of the husband of the deceased and owner of the brick kiln has deposed that on the day of incident at 11:15 a.m., he received a phone call from Vijay Gaikwad that his wife had sustained burn injuries. Therefore, he himself immediately went to the brick kiln and shifted Vijay's wife to Sassoon General Hospital. He has further deposed that on the way, he asked the wife of Vijay Gaikwad about the incident and "*she told that some gold was mortgaged and it was to be released. The wife of Vijay Gaikwad told Meena that she would get money and they would release the gold. Accused Meena then poured kerosene on her person and set her ablaze and therefore, she sustained burn injuries.*" In the cross-examination, nothing much could be elicited and his testimony has virtually remained unchallenged.

21. Analysis of the evidence of P.W. 2, P.W. 3, P.W. 5 and P.W. 6 would show that there is absolute consistency in the Dying Declaration

and the statements made by the victim to the said witnesses. P.W. 2 who is the maternal uncle of the deceased, in no uncertain terms has narrated what was told to him by the deceased about the Appellant pouring kerosene on her person and igniting matchstick. The cross-examination by the defence counsel did not in any manner cause a dent to the deposition of this witness. P.W. 3 in whose presence the Dying Declaration was recorded by P.W. 5 has also vividly described the sequence of events about examining the deceased. He has deposed that before recording the statement it was noted by him that the patient was conscious, well-oriented to time, place and person. Even after the statement was concluded he had again examined the patient and found her to be conscious, well-oriented to time, place and person throughout and has again made an endorsement along with his signature. This witness has categorically deposed that the deceased was mentally fit to make a statement. In the cross-examination, although it is stated that on the statement there is no endorsement that the 'patient is mentally fit to make a statement', on perusal of Exh.16 we find that there is proper endorsement with regard to the patient being conscious, well-oriented etc. though not in the exact words that 'patient is mentally fit to make a statement'. This would hardly make any difference when the meaning of both the endorsements is the same. Further if we analyse the Dying Declaration

made to P.W. 5, it can be seen that the said witness has taken utmost precaution before recording the statement of the deceased like asking the doctor whether the said lady was in a conscious state of mind to make a statement etc and after the doctor examined her and opined that she was in conscious state of mind to make a statement and also after ensuring that there was an endorsement of the concerned doctor on the statement, this witness proceeded to record the statement of the deceased. This witness has also ensured that the doctor was present throughout while recording the statement and no other person, including the relatives of the patient were present, to be sure that there was no tutoring of the deceased. This witness had also requested the doctor to examine the patient after completing the statement, to be certain that all throughout the deceased was in a fit state of mind and conscious to give the statement which was recorded by him. We therefore find the Dying Declaration to be free from any tutoring and we are inclined to accept the said Dying Declaration to be truthful. Further, corroboration to this Dying Declaration comes in the statement of P.W. 2 and P.W. 6. These witnesses have also categorically deposed as to what was narrated by the deceased, which has been referred to hereinabove. Thus, even what was narrated by the deceased to these witnesses was in the nature of dying declaration, which corroborates the oral dying declaration made by the deceased to

P.W. 5. To further lend corroboration, even the doctor (P.W. 3) has stated and confirmed what was told to him which corroborates the deposition of P.W. 5. It is settled law that a Court is entitled to convict on the sole basis of a dying declaration, if it is such that in the circumstances of the case, it can be regarded as truthful and that a truthful and reliable dying declaration may form the sole basis of conviction even without corroboration when the Court is satisfied about its truthfulness and reliability.

22. The Apex Court in the case of ***Irfan @ Naka*** (supra) has laid down certain factors which can be considered to determine when a dying declaration should be accepted. If we see the depositions of the prosecution witnesses, it would show that they are absolutely consistent on the point of the dying declaration made by the deceased to these witnesses. In fact, all the guiding parameters as stated in the judgment of ***Irfan @ Naka*** (supra) have been complied with. For instance, in the judgment, it is observed that a dying declaration should be made in expectation of death and at the first available opportunity, which from the deposition of the witnesses appears to be done. This Court does not find from the evidence on record that the Dying Declaration is the outcome of any tutoring or the product of any prompting or leading at the instance of police or any interested party.

Although, in the cross-examination of P.W. 2, the uncle of the deceased, it was tried to be brought on record that in the hospital, her relatives were also talking to her, however, it is not clear whether the relatives spoke to her before recording the statement or after recording the statement by the API and therefore, no inference can be drawn that the deceased was tutored in the hospital to give the statement. In fact, the suggestion has also been denied by P.W. 2 that the deceased was tutored to give the statement. Further, all precautions were taken by P.W. 3 and P.W. 5 whilst recording the statement, which lends further corroboration that the deceased was in a fit state of mind at the time when she made the statement. This Court finds the Dying Declaration to be consistent in the depositions of P.W. 2, P.W. 5 and P.W. 6 and does not find the Dying Declaration to be manifestation or fiction of the deceased's imagination. Considering the nature of injuries and the percentage of burns suffered by the deceased together with the fact that P.W. 3 had given an endorsement that the patient was in a fit state to give her statement, there is no reason for this court to disbelieve the Dying Declaration of the deceased. This Court is therefore of the opinion that the Dying Declaration inspires confidence and has been made voluntarily.

23. In the case of ***Uka Ram v/s The State of Rajasthan (AIR 2001 SC 1814)***, it was held that:

“para 6. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as a rule requiring corroboration is not a rule of law but only a rule of prudence.”

24. Further the prosecution has proved the cause of death by examining P.W. 7- Dr. Vijay Chandrakant Rathod. P.W. 7, who conducted the post-mortem, has deposed that on 22 .04. 2013, the dead body of Savitra Vijay Gaikwad was brought to Sassoon General Hospital by Hinjawadi Police along with inquest panchanama and he conducted post-mortem between 2:20 to 3:20 hours. He has deposed that the female was aged about 24 years and that he observed superficial deep burn injuries reddish, whitish and blackish present over the body. He has deposed that the burn injuries were found on neck, face, head, chest, lungs and abdomen and also observed an incised wound of venesection stitched with single stitch over both right and left medial malleolus and that all injuries were ante-mortem. He deposed that according to him, the cause of death was “due to complications following burns” and accordingly, he issued post-mortem report under his signature and in his handwriting. He identified the post-mortem report when it was shown to him. He deposed that the said injuries were sufficient to cause death in the

ordinary course of nature. In the cross-examination, this witness was confronted with the book on Medical Jurisprudence and Toxicology (Page No. 336) and the witness agreed with the proposition that in case of patients with kerosene burns, there is a possibility of carbon particles in the stomach. He has also agreed with the proposition that the burns caused by kerosene oil are usually very severe and are known from its characteristic odour and sooty blackening of the parts. However, nothing much was brought on record in the cross examination or was any doubt created that the death could not have been caused because of the burn injuries. From the evidence brought on record, we are inclined to hold that the deceased died due to burn injuries, which were caused by the Appellant by pouring kerosene and lighting of matchstick.

25. The prosecution in order to establish that the Appellant had mortgaged the gold ornaments with the jeweller, examined P.W. 4 Ghisulal Soni. P.W. 4, owner of Jewellery shop, deposed that about 2-3 years back one Meena Gaikwad had come to his shop and brought gold bids weighing 1.5 gms for the purpose of mortgage. He has further deposed that he took those articles under mortgage and gave Rs. 1,500/- to Meena Gaikwad in lieu of mortgage. He further deposed that after some days, the police brought Meena Gaikwad to his shop

and at that time, P.W. 4 told the police that said the Meena had mortgaged gold bids with him. In the cross-examination, P.W. 4 could not produce any receipt showing the mortgage of gold bids. He was also not in a position to produce any receipt to show that he had paid Rs. 1,500/- to the Appellant in lieu of mortgage.

26. If we analyze the evidence of P.W. 4, although it is true that apart from the oral testimony of this witness that the Appellant had mortgaged the gold bids and he had advanced Rs. 1,500/- to the Appellant in lieu of mortgage, there is no documentary proof to substantiate this aspect and therefore to that extent this witnesses cannot be believed. Even if we discount the evidence of this witness, there is sufficient material otherwise that has been brought on record by way of dying declaration which inspires confidence and therefore, even if this witness is not believed, for want of documentary evidence, there is other satisfactory material, which proves the case of the prosecution.

27. The Ld. Counsel for the Appellant submitted that prosecution has given a different version of the case by falsely implicating the Appellant whereas according to the Ld. Counsel for the Appellant, the burn injuries were caused due to the explosion of the stove. To test this submission, it will be necessary to see the evidence of P.W. 1 and

the spot panchnama exhibited as Exh.16. According to P.W. 1, the panch witness, on 17.04.2013, he went to the spot of incident on being called by the police, where he saw one plastic can of kerosene, matchbox and matchstick and there were some stains of kerosene on the ground which were taken charge of by the police under panchnama. Further the panchnama at Exh. 16 mentions a gas furnace (shegdi) in the house which was kept on the wooden table. It is very significant to note that in the entire spot panchnama, there is no mention of any stove to show that there was a possibility of explosion of the stove or there was any stove which had burst/exploded or any remnants of the exploded stove were found. If it was the case of the Appellant that the deceased had sustained burn injuries due to explosion of the stove, then there is no material brought on record even by preponderance of probability to that effect for the court to infer any possibility other than the one proved by the prosecution. Further, it has come on record that initially the history was given to the doctor about accidental burns and accidental death was recorded. However, there is nothing brought on record as to who had given the history. If we analyse the evidence of all the witnesses, P.W. 9, the husband had taken the deceased to the hospital and therefore there is every possibility that P.W. 9 could have given the history while admitting the deceased as he was the one who took the deceased to the

hospital. The possibility of P.W. 9 giving the history of accidental burns is fortified if his evidence is perused, wherein he states in his examination-in-chief that the deceased sustained burn injuries due to explosion of stove. P.W. 9 was declared hostile, however the portions marked 'A' and 'B' have been proved through the I.O. and P.W. 10. P.W. 3 in his cross-examination has stated that the history given by the patient was of accidental burns, on admission, however in the entire records and proceedings we did not find any such medical paper where such endorsement was made. In any event, the prosecution has established with the help of cogent evidence that the Dying Declaration was recorded by police in the presence of a doctor, and as per his say the deceased had clearly indicted the Appellant. We have already held that there is nothing to disbelieve the Dying Declaration and therefore the argument of the Ld. Counsel that the death was caused due to explosion of the stove or accidentally, deserves to be rejected.

28. The Ld. Counsel for the Appellant also raised an argument that the Dying Declaration was not recorded in the presence of the Magistrate and therefore it loses its significance as it has been recorded by the police officer. The prosecution has rightly relied upon the judgment in the case of **Purshottam Chopra** (supra) wherein

the court was pleased to observe that:

“Para 21. For what has been noticed herein-above, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement: and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail,

v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

*vi) **Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.***

vii) As regards a burns case, the percentage and degree of burns would not, by itself be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.”

29. The evidence of P.W. 9 would show that the prosecution did make attempts on the next day to call the SEM as well as the RMO of

the hospital however they refused. Therefore, as observed by the Apex Court that although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration, we are of the opinion that in the facts of the present case, just because the Dying Declaration is recorded by the API, it will not diminish its credibility which otherwise we find to be truthful.

30. It is argued by the Ld. Counsel for the Appellant that the Dying Declaration recorded by the API, P.W. 5 deserves to be rejected as it was not in a question- answer format. We are of the opinion that a dying declaration cannot be rejected just because it is not in question- answer format. A useful reference can be made to the judgement passed by the Hon'ble Apex Court in **Ram Bihari Yadav v/s The State of Bihar and Others**⁵ wherein it has been observed as under:

“9.....This Court did not lay down, in any of the aforementioned cases, that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few

5 (1998) 4 SCC 517.

sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person.....”

Therefore, the mere fact that the Dying Declaration was not recorded in a question-answer format, does not vitiate its admissibility and cannot be deemed to negate or diminish its evidentiary value.

31. The Judgment relied upon by the Ld. Counsel for the Appellant in the case of ***Piraji S/O Madhav Kumbhargave v/s The State Of Maharashtra BHC Criminal Appeal No. 327 of 2023*** can be distinguished on the facts of the case. The Hon'ble High Court in the above stated case, had come to a conclusion that it was not safe to rely upon the Dying Declaration due to variance in two dying declarations, non-production of material witness and non-production of crucial medical evidence and hence the conviction was not sustained. However, in the instant case, the dying declaration can be said to be believable, free from any tutoring. The testimony of the crucial prosecution witnesses on the point of dying declaration, the Dying Declaration recorded by P.W. 5, the oral testimony of the Medical Officer along with the endorsement and the Oral Dying Declarations made to P.W. 2 and P.W. 4 lead us to believe the case of the prosecution.

32. Taking into consideration the overall conspectus of the matter we are of the opinion that the Ld. Trial Court has rightly convicted the Appellant and we hold the conviction to be proper.
33. Accordingly the Appeal stands dismissed.
34. In view of above, Interim application is also disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)