



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.734 OF 2015

Udhav s/o Nagorao Salve
Age: 46 years, Occu.: Labour,
R/o. Bandarwada, Tal.Pathri,
Dist.Parbhani.
(Appellant is in Jail)

..Appellant /
Org. Accused No.1

Versus

The State of Maharashtra,
Through Police Station Pathri,
Tq.Pathri, Dist.Parbhani.

.. Respondent
(Org. Informant)

...

Advocate for Appellant : Mr.P.S.Paranjape
APP for Respondent - State : Mrs.V.S.Choudhari

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 15th February, 2023
PRONOUNCED ON : 23rd February, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. Appellant / original convict for charge under Section 302 of Indian Penal Code (IPC) has impugned the judgment and order of conviction passed by the learned Additional Sessions Judge, Parbhani, by which accused no.1 / appellant Udhav is sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for one year for offence under Section 302 of Indian Penal Code (IPC), to suffer one year rigorous imprisonment for offence under Section 498A of IPC, to suffer rigorous

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imprisonment for one month for offence under Section 323 of IPC and is also sentenced to suffer rigorous imprisonment for a period of one year for offence under Section 506-II of IPC.

BRIEF FACTS OF THE CASE IN TRIAL COURT

2. Appellant / Accused no.1 was charge-sheeted by Pathri Police Station, Tq.Pathri, Dist.Parbhani on accusation that, accused ill treated his wife Vandana. He had kept accused no.2 as mistress / concubine and was insisting that she would come to stay in his house. He used to beat Vandana for resisting and opposing the same. On intervening night of 11-07-2014 and 12-07-2014, on same count accused beat Vandana mercilessly. Again in the early hours of morning of 12-07-2014 he beat her saying that he has been asked by concubine to finish Vandana and thereafter, sprinkled kerosene on her person and set her ablaze. Children of deceased Vandana doused fire by pouring the water and she was taken to the hospital. From Rural Hospital, Pathri, she was shifted to Civil Hospital, Parbhani and there while undergoing treatment, deceased Vandana gave two dying declarations blaming husband Udhav for the burns. On the strength of her statements, FIR was lodged and **PW13** Chhatrabhooj, who was then posted at Pathri Taluka Police Station, carried out investigation and after gathering sufficient evidence, accused came to be charge-sheeted for the offence punishable under Sections 498A, 323, 302, 506-II of IPC and case came to be committed before the learned

Additional Sessions Judge, Parbhani, who while conducting trial, appreciated oral and documentary evidence on behalf of prosecution and finally convicted accused no.1 as stated above.

3. Now by invoking Section 374 of the Code of Criminal Procedure, original accused no.1 is taking exception to the said judgment of conviction by raising various grounds raised the appeal memo.

4. The brief account of submissions advanced by both the sides are as under :

SUBMISSIONS

ON BEHALF OF APPELLANT

Learned Advocate for the appellant would submit that appreciation of the evidence at the hands of learned trial Court is based on assumptions and presumptions and there was no trustworthy and reliable evidence on behalf of prosecution in the trial court. It is submitted that defence taken by accused no.1 has not been properly appreciated by the learned trial Judge before arriving to the conclusion. Learned Advocate would emphasize that here there was no direct evidence. Very children of accused no.1 and deceased, who were present in the house, have given different versions to the Police, however, still learned trial Court has recorded guilt of the accused. It is pointed out that required ingredients for attracting charge under Section 498A were not

available on record nor there was evidence in support of charges of commission of offence under Section 323, 506 of IPC, still learned trial Judge convicted accused no.1.

5. He next submitted that the only pieces of evidence before trial Judge were two dying declarations. However, learned Advocate submitted that both the dying declarations were not at all inspiring confidence and therefore, the same ought not to have been accepted by the learned trial Judge. Even legal position, while applying and appreciating dying declarations, has not been adopted by learned trial Judge while accepting the dying declarations. It is pointed out that prosecution's own evidence has created doubt as to whether deceased Vandana was physically and mentally in fit state to give dying declarations as there is inconsistency in the prosecution evidence as to who are the Doctors who examined the deceased and certified her fitness. Thus, it is his submission that considering such major lacuna in the sole piece of evidence, learned trial Court ought not to have relied said dying declarations as voluntarily and truthful version.

6. He submitted that apparently both dying declarations are manufactured and doctored documents and are not voluntary and truthful version of deceased Vandana. Learned Advocate took us through both the dying declarations and further questioned as to why there was need at all for

recording two dying declarations on the same day and there is no explanation from the prosecution side to that extent. It is submitted that on the contrary, there is evidence of the prosecution own witness **PW1** Maya that accused had tried to extinguish the accidental fire and as such conduct and participation of accused no.1 is reflecting his motive to save Vandana but the same has not been appreciated by the learned trial Judge. He pointed out that prosecution's own witness speak about deceased heating water and sustaining accidental burns and therefore, inspite of availability of such evidence on record, learned trial Judge has surprisingly ignored it and held accused no.1 guilty for commission of offence under Section 302 of IPC. Learned Advocate criticized the judgment of the trial Judge by submitting that the findings and reasons assigned by the learned trial Judge are not in consonance with the evidence on record and therefore, said judgment being erroneous, according to him cannot be said to be legally allowed to be sustained.

ON BEHALF OF STATE

7. In answer to above, learned APP would point out that there is clinching evidence before the learned the trial Court. Evidence was clearly suggesting that accused no.1 had a concubine and was thus, beating and harassing deceased Vandana for objecting such relations. Even in the night before occurrence, accused no.1 had beaten deceased and in the early morning hours of 12-07-2014 on same count, he beat her and went into kitchen, carried a

kerosene Can, poured on deceased and set her on fire and events that are took place are narrated by the deceased not once but twice in the hospital before the Police Constable as well as Naib Tahsildar. According to learned APP, both the dying declarations are truthful versions and being voluntarily given are inspiring confidence, and thus learned trial Court has rightly relied on the same. Accused no.1 is named to be author of the burns on the person of deceased, that apart it is pointed out by her that mother of deceased has also testified about deceased regularly informing her about ill treatment and the reason behind it. Medical authorities, who have examined deceased before dying declarations, have also stepped into witness box and have spoken about recording dying declarations while deceased was conscious and fit to give dying declarations. They had examined deceased before recording dying declarations. Therefore, the dying declarations are trustworthy and relied by prosecution and even believed and accepted by the learned trial Court. Therefore, canvassing in favour of judgment passed by the learned trial Court, learned APP submitted that the judgment, being legally sustainable and no infirmity being brought to the notice, appeal deserves to be dismissed.

8. Provisions under Section 374 of the Code of Criminal Procedure being invoked by the appellant and this Court being First Appellate Court and also final fact finding Court, we undertake the exercise of re-examining, re-assessing, re-evaluating the prosecution evidence to ascertain the sustainability

and maintainability of impugned judgment questioned before us.

We have examined the entire record before the trial Court, thereupon, it is revealed that prosecution has based its case on oral testimonies of 13 witnesses, whose status is as under :

PW1 Maya Uddhav Salve is daughter of accused and deceased. **PW2** Pushpabai Dhondiram Pradhan is mother of deceased. **PW3** Dr.Kalyan Nivrutirao Kadam is autopsy Doctor, who conducted post mortem of deceased Vandana on 19-07-2014 and issued post mortem report and opined cause of death. **PW4** Sanjay Ramkishan Barle is the carrier, who carried seized Muddemal to the Analyzer. **PW5** Navnath Janardhan Gaikwad is Circle Officer, who drew map of spot on request of Police. **PW6** Laxman Rambhau Dambale is the neighbour of accused and deceased. **PW7** Jijabhau Vithalrao Salve is relative of accused. **PW8** Sopan Ganpatrao Bade is Police Constable posted at Chowki at Civil Hospital, Parbhani, who recorded first dying declaration Exh.44. **PW9** Manish Kashinath Salve is Panch to seizure of clothes of accused. **PW10** Sk. Mohd. Washim Sk.Mohd. Hussain is the Officer of Tahsil Officer, who recorded second dying declaration on 12-07-2014 at 03:20 p.m. in the afternoon at Exh.53. **PW11** Dr.Anjum Kausar Mohd. Moosa is the Doctor, who examined and certified fitness of deceased Vandana on request of Police Constable i.e. certification at Exh.44. **PW12** Dr.Gajanan Sopanrao Kale is also a Doctor, who claims to have examined and admitted deceased on 12-07-2014 at around 07:40 a.m. in hospital with 48% burns. **PW13** Chhatrabhoj Tatyrao

Nagargoje is the Investigating Officer, who carried out investigation and charge-sheeted accused persons.

9. Therefore, here prosecution took accused to trial by taking support of oral evidence as well as dying declarations. Such evidence is now re-examined by us after hearing submissions advanced by both the sides.

ANALYSIS

10. The first set of evidence is oral testimonies. Let us deal with the same.

PW1 Maya is the daughter of accused and deceased. In her evidence at Exh.15 she deposed that that night her mother had head-ache and therefore, she asked her father accused no.1 to take her to the hospital. However, her father received telephone call from Chairman of the School Committee and therefore, father went away and returned home at around 09:30 p.m. and he told that it was late and he suggested her mother that he would take her to the hospital next day. Therefore, she herself, her brother and her mother all went to sleep. She stated that her mother was heating water on the electric stove in the morning and that time, she suffered burns and it was extinguished by throwing water. Consequently, not finding her supporting, learned APP with permission of the Court, put questions in the nature of cross to her but except conceding about hearing shouts of mother, this witness had denied the entire case put by the learned APP. Portion marked as A, B and C to which her

attention was invited, is also denied by her as she did not say about this to Police.

11. **PW2** Pushpabai, mother of deceased claims that her son-in-law had kept a lady and according to this witness, when she went to meet deceased daughter in the hospital, she allegedly told her that accused no.2 Meena had told her husband to burn her face and accused no.1 had poured kerosene on her person and set her on fire. She states that she learnt about the incident from **PW1** Maya and therefore, she was with her for eight days during which Vandana disclosed that her husband burned her as there was quarrel between herself and her husband.

Above witness is **cross-examined** by defence. Initially, on the educational level of **PW1** Maya, about children of deceased, their education. She is unable to state whether accused no.1 was taking Vandana to Dr. Sikwar. This witness is asked about her personal life and she answered to be residing separately. She answered that she had seen hands, chest, abdomen of Vandana to be in burned condition. She denied that the legs were also burned. She admitted that Vandana was shouting in the hospital out of pain. She answered that relatives were visiting hospital to see Vandana. She has admitted that Police did not record her statement and Police made only enquiry of her name.

12. **PW3** Dr.Kalyan is the Doctor who conducted the post mortem on deceased Vandana and according to him, she had suffered 48% burns. He opined that injuries mentioned in column no.17 were sufficient to cause death in ordinary course of nature.

This witness is questioned about parts of the body burned. His attention is invited to column no.12 of post mortem report where portion of burn is mentioned as 63% burn. His attention is also invited to inquest panchanama. Then he is questioned about post burn effect on human body. He is asked whether in burn cases pain killer treatment is necessary and he answered it in affirmative. He admitted that there can also be accidental burn. He denied that opinion was issued at the behest of Police.

This witness is **re-examined** on request of prosecution and at such time he is asked whether he has examined and certified fitness of lady and to that extent he answered that Constable at Police Chowki informed him that Naib Tahsildar came to record statement at 03:20 p.m. He examined Vandana and endorsed that she is conscious and able to give statement. He stated that he examined the patient and questioned her name. He also stated that in his presence, deceased told to Naib Tahsildar that on 11-07-2014 her husband beat her and 12-07-2014 at 05:00 a.m. her husband said that he wanted to bring accused no.2 Meena in the house resulting into quarrel and husband poured kerosene on her person and set her on fire. This witness stated that after giving statement again he examined the patient and she was conscious

throughout the statement and endorsed to that effect.

He is again questioned by defence whether he answered that he had initially given evidence on 20-04-2015 and before giving evidence, he had gone through Court file, inquest panchanama. He stated that on 20-04-2015 he has wrongly stated in cross-examination that he did not carry out medical examination of patient. He is questioned as to whether Police Constable meet him in casualty and at what time. He is unable to give the name of Constable. He clarified that "able to given statement" means mentally fit to give statement. He is asked what would be the effect if kerosene is poured on a standing person and which all part could be effected. Rest of the suggestions are denied.

13. **PW6** Laxman is the neighbour and in witness box he stated that accused is his neighbour. He identified him in the Court. According to him, the incident took in the night while he was sleeping. He heard shouting from the house of accused no.1 at around 05:30 a.m. and so he claims that he went on the wall and saw towards the house of the accused no.1. He stated that wife of accused no.1 i.e. Vandana was burning. Accused no.1 as well as three daughters and one son were present there. Children were extinguishing fire of burning lady and thereafter, she was brought to Pathri Government Hospital. He denied that there were illicit relations of accused no.1 with accused no.2 Meena and therefore, there was dispute between husband and wife.

At this stage this witness was **cross-examined** by learned APP but he mentioned that Police did not record his statement and he is unable to state as to why Police did not record his statement. He stated that contents of Portion marked A is not mentioned by him to Police. He stated that he has good relations with accused no.1 and that he was a neighbour. This witness denied that his statement being recorded by Police. That he has good relations with accused no.1, who is his neighbour. Rest all is denial.

In **cross-examination** at the hands of defence, he answered that when he saw burning lady at that time, accused had thrown blanket on her person to extinguish fire.

14. **PW7** Jijabhau did not support prosecution as he denied knowing how Vandana died and he also denied that he had ever been to the house of Vandana. He flatly denied to act as Pancha to the spot also.

15. **PW8** Sopan is Police Constable posted at Police Chowki at Civil Hospital, Parbhani and it is his testimony that on 12-07-2014 at around 08:30 a.m. M.L.C. about admission of burn lady was received. He identified it to be at Exh 43. He answered that he went and met Dr.Kale in the Hospital, requested him to examine patient for fitness to give statement. Thereafter, they both went to burn ward. Doctor examined deceased and gave opinion that lady is conscious to give statement. Thereafter, deceased Vandana

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narrated that her husband poured kerosene on her body and set her on fire. She also disclosed that her husband is having illicit relations with accused no.2 and that he used to bring her home and on that count there was dispute between accused no.1 and deceased. She further disclosed that she shouted. Thereafter, her two daughters and son came and extinguished the fire. This witness stated that he obtained her thumb impression and Doctor was present throughout the statement and he identified the statement Exh.44.

In **cross-examination**, he answered that he met Dr.Kale at 10:00 a.m. in the O.P.D. He answered that Doctor accompanied him and examined the lady patient and given endorsement. He answered that except Dr.Kale, no other Doctor examined the lady at that time i.e. around 11:00 a.m. He answered that body of the lady was burned from abdomen to head. Rest all suggestions including giving false statement are denied by this witness.

16. **PW9** Manish did not support prosecution as he stated that nothing been seized in his presence by Police on 14-07-2014.

17. **PW10** Sk.Mohd. Washim Sk. Mohd. Hussain spoke about working in Tahsil Office, Parbhani and about receiving communication for recording dying declaration. According to him, Tahsildar has delegated powers to him to record dying declaration in the capacity of Special Executive Magistrate and accordingly, he proceeded to hospital, met Doctor at burn ward and on his

request, Doctor examined deceased and gave opinion that she is fit to give statement. He stated that he enquired with lady, who told her name as Vandana and she disclosed that on 11-07-2014 her husband beat her in the night by saying that he wanted to bring concubine in the house and further stated that said lady asked her husband to kill Vandana and therefore, he went in the kitchen, returned with kerosene Can, poured it on her person and set her on fire. This witness stated that said incident had taken place at 05:00 a.m. He identified the dying declaration recorded by him to be at Exh.53.

This witness is subjected to extensive **cross**. Initially, he is asked on whose letter he went to record dying declaration and he is asked whether he can file order delegating the powers of Special Executive Magistrate. He answered that he reached at the burn ward at 03:30 p.m. He answered that it took 2-3 minutes to Doctor to examine patient on his request. Witness is asked about percentage of burns but he is unable to state about it. He is asked whether patient was given saline. He is asked whether the lady told him that her statement was recorded earlier. He admitted that patient has not stated about putting signature. He is unable to state whether right thumb was burned but he admitted that thumb impression is not attested. Rest all suggestions are denied.

18. **PW11** Dr.Anjum. She is the Doctor, who was on duty in casualty and she spoke about Constable approaching her and thereafter, she examined

Vandana and putting up endorsement. Endorsement of fitness i.e. patient to be conscious and oriented to give statement. She identified the same to be at Exh.44. Then she stated that Constable recorded the statement of Vandana in her presence. That Vandana stated that there was quarrel and her husband told her that he will kill her, poured kerosene on her person and set her on fire. Her children thrown the water and extinguished the fire.

Above Doctor is also subjected to **cross** as to whether register is maintained in the casualty and how much time it required to make entry in register. She is asked whether she herself went through the statement of lady. She is unable to state name and address of patient. She admitted that timing was earlier noted as 11:00 a.m and later written as 11:30 a.m. and at such place she did not cause her initial signature. She is unable to state the name of the Constable. She denied that Dr.Kale had made both the endorsements. She volunteered that endorsements were in her own handwriting. She is questioned about post burn effects on the body.

19. **PW12** Dr.Gajanan stated that on 12-07-2014, while he was on duty in casualty, a lady patient Vandana was admitted at 07:40 a.m. and he had recorded M.L.C. which he identified at Exh.43.

In **cross**, he has admitted that patient has not made any allegations against anybody about burning her.

20. **PW13** Chhatrabhooj is the Investigating Officer and he narrated all the steps taken by him during the investigation at his hands.

21. What can be culled out from the oral account dealt and discussed above is that **PW1** Maya, daughter of accused no.1 and deceased has not supported prosecution. **PW2** Pushpabai, mother-in-law of accused no.1 spoke about hearing from her daughter about accused no.1 setting her on fire. She has hearsay information. Though, she claims to have received oral dying declaration from her daughter, she has not lodged FIR or informed anyone inspite of presence of Police in the hospital. **PW6** Laxman, immediate neighbour speaks about hearing shouts from the house of accused no.1 and seen deceased burning and children extinguishing the fire and accused no.1 to be present there. This witness is also not aware as to what actually happened and how episode of fire took place. Moreover, in cross he speaks of accused no.1 dousing fire by using blanket. **PW7** Jijabhau has not supported prosecution. Rest all the witnesses are Medical Officers, who were on the duty at respective times i.e. during visit of Constable and Special Executive Magistrate for recording dying declarations Exhibits 44 and 53. From oral account of prosecution witnesses, PW1 Maya, very daughter of accused no.1 and deceased, who was present in the house, attributes incident of fire as accidental one. His other sisters and brother are not examined by prosecution for the best reasons known to them. Therefore, evidence of crucial witnesses

does not incriminate accused no.1 for setting wife Vandana on fire.

22. Now, let us shift to the second set of evidence i.e. dying declarations. First dying declaration seems to be recorded by **PW8** Sopan, a Police Constable, who was said to be on duty at Police Chowki in Civil Hospital, Parbhani, which is at **Exh.44** and second dying declaration is recorded by **PW10** Sk.Mohd. Washim Sk. Mohd. Hussain, Special Executive Magistrate, which is at **Exh.53**.

First dying declaration seems to be recorded at 11:00 a.m. on 12-07-2104. Second dying declaration which also seems to be recorded on same day, is at Exh.53 but it is recorded at around 03:20 p.m.

23. Before testing the voluntariness, truthfulness, admissibility and reliability of both the dying declarations, we propose to give a brief account of the settled principles relating to recording of dying declaration, which we have come across, dealt and decided by Hon'ble Apex Court in Criminal Appeal Nos.194-195 of 2012 in the case of ***Purshottam Chopra and Anr. vs. State (Govt. of NCT Delhi)*** wherein after dealing with several landmark rulings, the principles are summarized and we propose to quote the same here which are 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.”

The above principles are culled out after taking into account various rulings.

24. Keeping in mind the above principles, we proceed to scan the dying declarations Exhibits 44 and 53 to decide whether they are voluntary, truthful, free from infirmities and are worthy of credence.

On carefully examining **first dying declaration Exh.44**, it seems to have been informed that, on night of 11-07-2014, at the instance of accused no.2 her husband abused her and beat her and even threatened to kill her. At 05:00 a.m. on 12-07-2014, she alleges that, her husband again started beating her and on being questioned on that count, she stated that he wanted to reside with accused no.2 and that he would kill her just now and saying so, he went and brought kerosene Can, poured it on her and ignited her. Hearing her shouts, her son Prabhuddha and daughters Maya and Pradnya threw water on her and extinguished fire.

25. Wherein **second dying declaration Exh.53**, which is in typed format the statement is that, incident took place on 11-07-2014 at 11:00 p.m. wherein husband beat her by kicks and fists and in the morning of 12-07-2014 again at 05:00 a.m. husband said that he wanted to bring concubine i.e. accused no.2 in the house and saying that accused no.2 had asked to kill her, he again beat her, went to the kitchen, came back with kerosene Can, poured it on her and ignited her.

26. If above two dying declarations are compared, it is emerging that in first

dying declaration, there is only material about accused no.1 saying that he wanted to reside with accused no.2 and hence he would kill deceased. Whereas in second dying declaration, deceased informs that accused no.1 told to her that accused no.2 had asked him to kill deceased and therefore, he poured kerosene and ignited her. Consequently, second dying declaration is distinct from first dying declaration and in second dying declaration there is improvisation. Therefore, *prima facie* dying declarations cannot be said to be consistent version. Further inspite of deceased being brought in the hospital at around 07:40 a.m., no efforts were taken to record her dying declaration immediately, rather steps seems to be taken for issuing M.L.C. at around 08:30 a.m. or so even when Police Chowki is located in the very hospital and further Police Constable seems to have approached deceased for recording dying declaration at around 11:00 a.m. i.e. after three hours or so after admission. On carefully going through the dying declarations, to the naked eye it is apparent that certification of fitness are taken in deliberately kept space. Inference that can be drawn is that certifications were not taken before or during recording. Even attestation has not been obtained below alleged thumb impression of deceased. Therefore, apart from variances, there are infirmities in the dying declarations.

CONCLUSION

27. From above discussed evidence, here it is emerging that, **PW1** Maya
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daughter of accused no.1 and deceased, who was very much available in the house, speaks of her mother heating water and suffering accidental burns. **PW2** Pushpabai, mother of deceased, though stated that her deceased daughter informed about her husband setting her on fire, she has not informed about alleged oral dying declaration to her to anybody and has not lodged FIR. She seems to have come to the hospital on receipt of hearsay information about her daughter suffering burns. **PW6** Laxman, immediate neighbour spoke about accused no.1 participating in extinguishing fire of deceased by using blanket. Even after **PW1** Maya had turned hostile, prosecution has not taken pains to examine other two eye witnesses i.e. another daughter and son of deceased. As discussed above, both dying declarations dealt and discussed are not consistent for the reasons stated above.

28. We have gone through the judgment passed by the learned trial Judge. It seems that inspite of infirmities and variance in dying declarations, learned trial Judge has held the dying declarations to be voluntary and truthful and seems to have accepted the same and further acted upon it while recording guilt of the accused. Evidence of **PW1** Maya, very own daughter of accused no.1 and deceased, and **PW6** Laxman, immediate neighbour does not seem to have been appreciated properly. He relied on those two dying declarations which are the indirect pieces of evidence. When direct i.e. oral evidence of eye witness is otherwise, then dying declaration cannot be relied. Therefore,

the findings reached at by learned trial Judge are in our opinion either in absence of cogent evidence or on non-appreciation of evidence of prosecution, thereby necessitating indulgence of this Court. Hence, appellant succeeds and we accordingly proceed to pass following order :

ORDER

- i) Criminal Appeal stands allowed.
- ii) The conviction awarded by learned Additional Sessions Judge, Parbhani on 29-08-2015 in Sessions Trial No.110 of 2014 to the appellant Udhav s/o. Nagorao Salve for the offence punishable under Sections 302, 498A, 323 and 506-II of the Indian Penal Code stands set aside. Appellant stands acquitted of the offence punishable under Sections 302, 498A, 323 and 506-II of the Indian Penal Code.
- iii) Appellant be set at liberty, if not required in any other case.
- iv) Fine amount deposited, if any, be refunded to the appellant after statutory period.
- v) It is clarified that there is no change in the order passed by the learned Additional Sessions Judge, Parbhani, regarding disposal of Muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT