STATE OF MAHARASHTRA

v.

SANJAY S/O DIGAMBARRAO RAJHANS

OCTOBER 25, 2004

[P. VENKATARAMA REDDI AND P.P. NAOLEKAR, JJ.]

Criminal Trial—Conviction based on Dying declaration—I.O. recording second dying declaration immediately after the recording by Executive Magistrate—Recorded without obtaining opinion from Doctors as to the fitness of victim—Held, such a dying declaration is not reliable.

Practice and Procedure—Two improbable theories—One by Prosecution other by defence—Hence, benefit of doubt ought to be given to the accused.

Dying declaration—More than one declaration—Held, must be tested on the touchstone of consistency and probabilities.

Evidence Act. 1872—Evidence of parents of deceased—Victim sustained serious burns—Statements—Held, not reliable.

PWs 2 and 3 deposing about evidence of PW4—Eye-witnesses—Not noting the number of vehicle—Many people standing—Victim shouting name of accused—No one else having heard the name—Held, highly improbable as it is open to doubt.

The deceased 'V' and the Respondent-accused were engaged to be married. Some strained relations developed between them and the respondent had some reservations to marry her. On 28.9.1991 at about 7.30 p.m. the accused and V were on the way to V's house and while they were in the locality, the Respondent slowed down the scooter and by taking out the petrol can kept in the scooter, sprinkled the petrol on the person of V and set her on fire, all of a sudden on the moving scooter. On noticing the flames on the body of V and hearing her cries, some people gathered and tried to put out the fire. PW4 was one amongst them. He overheard V shouting. The accused also had some burn injuries when he tried to extinguish the fire. The accused took V to the Government Medical College Hospital. PW8—the Casualty duty Doctor,

A recorded a medico legal case and noted what she said, in the register. He also noted that the patient was brought by the accused.

PW7 recorded 2nd dying declaration. In her statement, the victim stated that the accused quarrelled and poured the petrol taken out from the can and set her on fire after slowing down the scooter on the road behind Lokmat
B office and some people gathered and extinguished the fire and that she became unconscious thereafter. She also stated that the accused brought her to the hospital.

The accused, whose hands and plams were burnt to the extent of 3%,
C was admitted in the hospital and he was discharged on the next day. He was arrested later.

The trial court convicted the respondent and the High Court on appeal reversed it.

D Dismissing the Appeal by State, the Court

HELD: 1. The intrinsic worth and reliability of so called dying declaration can be judged from its tenor and contents thereof. That apart, the I.O. did not come forward with any explanation as to why he thought of recording the statement soon after the Executive Magistrate purportedly
E recorded the statement, that too without taking the opinion of the Doctor as to her fitness. The Court has no hesitation in discarding the alleged statement recorded by PW13 under Ext.86. The anxiety to plant the evidence is discernible from this document. [627-A-B; B-C]

2. The version of homicide set up by the prosecution as well as the
F version of suicide set up by the accused appear to be highly improbable and do not inspire confidence in the mind of the Court to believe either version. In this state of things, when two incredible versions confront the Court, the Court has to give benefit of doubt to the accused and it is not safe to sustain the conviction. [630-F-G]

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3. The contradictions in the two dying declarations coupled with the high degree of improbability of the manner of occurrence as depicted by the prosecution case leaves the Court with no option but to attach little weight to these dying declarations. It is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters.
H It has been repeatedly pointed out that the dying declaration should be of such

nature as to inspire full confidence of the Court in its truthfulness and correctness (vide the observations of Five Judge Bench in *Laxman* v. *State of Maharashtra,* [2002] 6 SCC 710. Inasmuch as the correctness of dying declaration cannot be tested by cross-examination of its maker, "great caution must be exercised in considering the weight to be given to this species of evidence". When there is more than one dying declaration genuinely recorded, they must be tested on the touchstone of consistency and probabilities. They must also be tested in the light of other evidence on record. Adopting such approach, the court cannot place implicit reliance on the dying declarations, especially when the High Court felt it unsafe to act on them.

[630-G-H; 631-A, B, C]

4. It is in the evidence of PW2 that they were by the bed-side of their daughter at 9.30 or 9.45 p.m. The evidence of the first I.O. PW6 is to the effect that he went to the hospital and contacted the doctor at the hospital at 10.15 p.m. and the doctor gave it in writing that the patient was not in a position to give the statement. About an hour later, PW13—the next I.O. made an attempt to have the statement recorded by the Executive Magistrate but he could not succeed for the reason that the duty doctor opined that the patient though conscious was disoriented and not in a fit condition to give the statement vide Ext.35. That being the situation, it is highly doubtful whether the victim was in a position to speak to her parents at about 9.45 p.m. as alleged by PW2. Another fact that makes PW2's version incredible is that admittedly he did not take any action by reporting to the police after he heard those alleged words from 'V'- PW2 did not also make any enquiries with the accused, who according to him, was present at that time. That is not the natural course of conduct. The Court is not inclined to attach any weight to the deposition of PW2 narrating the alleged statement made by the victim regarding the cause of her burns. For the same reasons, the evidence of PW3—the mother of the deceased, cannot be relied upon.

[631-E, F, G, H; 632-A]

5. It is doubtful whether PW4 would have distinctly heard the name of the accused from the place where he was washing the utensils. By the time he went there already some people surrounded her in a bid to extinguish the fire. Amidst the notice and chaos that would have prevailed there, it is highly doubtful that PW4 could at all hear any such words from the mouth of the victim who would have been in a state of panic and unbearable pain. Another aspect which deserves notice in this context is that if they had seen victim lady crying aloud naming the accused as the culprit, the people who gathered

there and extinguished the fire would not have simply allowed him to carry her to the hospital without any demur. The natural conduct would be at least to note the auto-rickshaw number and report the matter to the police but no such facts were spoken to by PW4. The Court is of the view that the credibility of his version regarding the words alleged to have been uttered by the victim is open to doubt as it goes against probabilities and the natural course of conduct. At any rate, the deposition of PW4 cannot form the sole basis for conviction. [632-E, F, G, H; 633-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 648 of 1998.

From the Judgment and Order dated 12 and 13.11.1997 of the Bombay High Court at Aurangabad in Crl.A. No. 68 of 1993.

Ravindra Keshavrao Adsure for the Appellant.

K.V. Viswanathan, Sanjay Kharde and Ms. Chandan Ramamurthi for the Respondent.

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. This is an appeal filed by the State of Maharashtra against the verdict of acquittal recorded by the Aurangabad Bench of the Bombay High Court. The respondent was convicted under Section 302 IPC and sentenced to life imprisonment by the Additional District and Sessions Judge, Aurangabad on the charge of committing the murder of Veena with whom the accused had a marriage engagement. The marriage was scheduled to take place on 2nd December, 1991. The tragic incident occurred in the night of 28th September, 1991 at about 7.30 p.m. The victim Veena died in the hospital on the next day i.e. 29th September at about 8 p.m. on account of the burn injuries she received on the previous day. The accused also had some burn injuries on his hands in the process of extinguishing the flames on the deceased. The conviction was based on certain dying declarations and the circumstantial evidence brought out by the examination of PW4 who was a vendor having a tea-stall near the spot of burning. The High Court, on an elaborate consideration, felt it unsafe to rely on the dying declarations or to accept the evidence of PW4 and therefore set aside the conviction. We are informed that the respondent had undergone about five years of sentence during and after the trial.

We shall advert to the facts alleged by the prosecution and the sequence of events that had happened on the two crucial days i.e. 28th and 29th September, 1991 as emerging from the prosecution evidence.

The deceased Veena was a cricket player and the accused was the captain of the cricket team when she was studying in the college. Later, he became a cricket coach. They fell in love with each other and the elders arranged a betrothal function on 18th August, 1991 at which it was decided to celebrate the marriage on 2nd December, 1991. The accused a graduate, was employed in Census office and the deceased was studying in Law College. The accused and the deceased were closely moving about. Some strained relations developed between them and the accused had some reservations to marry her. On the crucial day of occurrence i.e. 28th September, 1991, Veena had gone to see the accused after informing her mother. At about 7.30 p.m. the accused and Veena were on the way to Veena's house and while they were in the locality behind Lokmath building, Aurangabad, the accused slowed down the scooter and by taking out the petrol can kept in the scooter, sprinkled the petrol on the person of Veena and set her on fire, all of a sudden. All this was done on the moving scooter. On noticing the flames on the body of Veena and hearing her cries, some people gathered and tried to put out the fire. PW4 was one amongst them. He overheard Veena remarking "Pramod, why you have burnt me?" (Sanjay Pramod is the name of the accused). The accused also had some burn injuries when he tried to extinguish the fire. The accused then took her in an auto-rickshaw to the Government Medical College Hospital. Soon after the admission at 8 p.m, PW8—the Casualty duty Doctor, enquired from the victim Veena as to how she got burnt. On getting the answer from her, PW8 recorded a medico legal case and noted what she said in the register the—extract of which is Ext.39. He also noted that the patient was brought by the accused Sanjay. She told the Doctor that her 'husband', while going on a scooter on the road near Lokmath building, poured petrol and set her on fire and the petrol can was in her hand. He noted the percentage of the burns on various parts of the body, the total percentage being 98. At the same time, a Police Constable on duty (PW1) at the police post of the hospital, made an entry in the relevant register of the substance of what he heard from the victim while narrating the history to the Doctor. That is marked as Ext.P13. He then informed the CIDCO police station as the offence took place within the jurisdiction of that police station. PW15, the Head-Constable noted the message, made an entry in station diary and informed PW6, the Sub-Inspector of Police when he came there at 8.40 p.m. PW6 reached the hospital at 10.15 p.m. PW6 then addressed a letter—Ext.29 to the

A in-charge Doctor to apprise him whether the patient was in a condition to give the statement. The Doctor stated that she was not in a position to give the statement. Then he returned to the police station and registered the crime under Section 307 IPC. The FIR—Ext.30 was drawn up on the basis of the same and sent to the concerned Magistrate. While so PWs 2 and 3 the father and mother of the deceased, having got the news, went to the hospital and B by 9.45 p.m. they saw Veena in the ward. Veena allegedly told them that the accused was responsible for setting her on fire. PW13—another Sub-Inspector attached to CIDCO police station took over investigation from PW6 at about 11 p.m. He went to the Executive Magistrate/Naib Tehsildar—PW7 and requested him to record the statement of the victim Veena. Initially, at about C 11.10 p.m, it was not possible to record the statement as the Doctor stated that the patient was conscious but disoriented. However, at 3.15 a.m, the Doctor endorsed on Ext.35—letter, that the patient was conscious and oriented and in a condition to give the statement. Then the statement was recorded by PW7 as per Ext.37 which is relied upon as the 2nd dying declaration. In her statement, the victim stated that the accused quarrelled and poured the D petrol taken out from the can and set her on fire after slowing down the scooter on the road behind Lokmat office and some people gathered and extinguished the fire and that she became unconscious thereafter. She also stated that the accused brought her to the hospital. We have another statement, recorded at 4.30 a.m. by the Investigating Officer PW13, which is sought to E be treated as a dying declaration. This statement was recorded without consulting the Medical Officer. The spot was inspected by PW13 on being shown by the father of Veena in the morning of next day. He had seized the articles found at the spot of incident including an identity card and purse. The scooter of the accused was found lying nearby. PW13 recorded the statement of PW4 and others. He arrested the accused at 7.20 p.m. on 29.9.1991. The F victim Veena died at the hospital at 8.10 p.m. The two Doctors who attended on the deceased at the hospital were PWs 10 and 11. After holding the inquest, PW13 sent the dead body for postmortem. The postmortem examination was done by PW12. The cause of death was noted as shock and peripheral circulatory failure due to 95% burns. The investigation was entrusted G to PW15 on 23rd October, 1991. He re-examined PW4 and also recorded statements of others and then filed the charge-sheet in the Court of C.J.M., Aurangabad on 1.7.1992.

The accused, whose hands and palms were burnt to the extent of 3%, was admitted in the hospital and he was discharged on the next day at 2.30

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p.m. As already stated, he was arrested later on i.e. at 7.00 p.m. The accused examined himself as a witness. As DW1 advert he stated that the deceased was ill-tempered and impatient person, that she was insisting on performing a registered marriage instead of waiting for the ceremonial marriage, that on the crucial day, he took her to the Muqbara to change her mood and thereafter he came back to his house. He further stated that in the evening he went to the house of Veena and on coming to know that she did not return to the house, he took Veena's brother with him to search for her. However she was found at his house and both of them left by the scooter to the house of Veena. On the way at about 7.15 p.m. he felt that something was burning at the back side and when he was trying to stop his scooter, Veena jumped from the scooter. Then he noticed the fire on her and tried to extinguish it. At the hospital, while he remained by the side of Veena, he sent the message to his parents and after his father and others came, they were requested to inform the parents of Veena. Her parents came to the hospital at about 10.15 p.m. DW1 also produced certain letters written by Veena in order to throw light on her suicidal disposition.

Excepting the alleged statements of the deceased and the statement of the accused in the Court, there is no direct evidence relating to the occurrence, though it happened on a public road in a busy locality. No motive had been established. The circumstances emerging from record would reveal that the incident must have been a sudden affair. It looks mysterious as well. In the alleged dying declaration given to the Executive Magistrate, she stated that the accused quarrelled with her for no reason. That means, it was a sort of petty quarrel, if we go by that dying declaration. However, in Ext.39 which is said to be her earliest revelation, it is mentioned that the accused was doubting her character which goes contrary to the version recorded by the Executive Magistrate. The conduct of the accused soon after and subsequent to the incident does not in any way point to his guilt. At this stage, it should also be noted that the accused, who remained in the hospital for about 11 hours after the dying declaration was recorded by the Executive Magistrate, was not interrogated or arrested, though by that time the incriminating evidence was said to be available with the police. He was allowed to be discharged at 2.30 p.m. and was arrested only at 7.00 p.m. These factors ought to be kept in view in testing the prosecution case. We must also have regard to the fact that this is an appeal against acquittal and this Court ought not to interfere unless the Court is convinced that the decision of the High Court is vitiated by perversity, wrong legal approach or non consideration of material evidence. If two views are reasonably possible, this Court cannot but uphold the verdict

A of acquittal.

Amongst the items of incriminating evidence in the form of dying declarations, we would first like to alert to the last one in point of time which was recorded by the Investigating Officer—PW13 at 4.30 a.m. on 29th September, 1991. Leaving apart the question whether it can be considered as
B a dying declaration or a statement recorded under Section 161 Cr.P.C., we have no element of doubt that Ext.86 is a manipulated document introduced by a overzealous Investigating Officer to buttress the prosecution case.

The English version of Ext.86 runs into two full typed pages or more.
C The details—necessary and unnecessary, minute and material are found therein. The declarant starts with family particulars and goes on to say about her education, her contacts with the accused, the hour to hour details of her movements from the time she left home at 9.00 a.m., the colour and style of the dress she was wearing, the places at which she spent with the accused and the conversation they had, the scooter number, the name of the petrol
D pump where she purchased petrol and so on. This was all prefatory to the actual incident which she narrated in the later part of the statement. It would be impossible to believe that a person suffering from 95% burns would narrate the details in such vivid manner and coherent way. A perusal of Ext.86 further reveals that the relevant facts to build up the prosecution case including the
E possible motive, the ready availability of petrol in a can are all incorporated in that statement. The accused was alleged to have said that he was not interested in marrying her in the course of conversation at Muqbara which led to a minor quarrel. According to the statement—Ext.86, the accused gave Rs.50 to purchase petrol which he wanted her to keep ready so that they may proceed to Daulatabad Fort straight after returning from the office. She went
F on to say that the accused did not return for quite some time and she roamed here and there and went to his house and found the accused in the house at 7.00 p.m. Then, the accused volunteered to drop her back at home on the scooter. She added that he took the purse and petrol can in the first instance but later returned the purse and deposited the petrol can in the scooter dicky. The actual incident was then narrated. According to that narration, while
G going on the scooter at 7.30 p.m. to her house, they had a 'verbal quarrel again' and the accused slowed down the scooter near Lokmat office building, took out petrol can from the front side dicky of the scooter by his right hand, opened the cork and poured petrol on her, while uttering the words that he will not marry her and ignited the match. At that time, she was busy talking
H with him. Immediately, she was engulfed by fire and as the scooter was

proceeding in slow speed, she jumped down. When she started shouting, four or five persons came and extinguished the fire. Thereafter, the accused brought an auto-rickshaw and took her in that vehicle to the hospital and admitted her. The statement goes to the extent of giving an explanation as to why the accused was keeping a match box with him. The intrinsic worth and reliability of this so called dying declaration can be judged from its tenor and contents themselves. That apart, the I.O. did not come forward with any explanation as to why he thought of recording the statement soon after the Executive Magistrate purportedly recorded the statement, that too without taking the opinion of the Doctor as to her fitness. We have no hesitation in discarding the alleged statement recorded by PW13 under Ext.86. The anxiety to plant the evidence is discernible from this document.

Coming to Ext.37 which is the dying declaration recorded by PW7 by name Ghulam Gouse—Naib Tehsildar-cum-Executive Magistrate at 3.15 a.m., we share, to some extent, the doubts that have been expressed by the High Court. In this statement, the deceased stated that the accused was her fiance, when she went to see him on the morning of 28th September, he told her that "we shall go to Daulatabad for roaming, you take the petrol", in the afternoon, she purchased one liter petrol in a can from Kranthi Chowk Petrol Pump and kept the same in his house; as he did not turn up, she went to his house at about 6.00 p.m. and that he quarrelled with her and poured the petrol taking it out from the can and set her on fire and at that time she was wearing Terricot Punjabi dress. This gives an impression that the incident took place at the house of the accused. However, in the following sentence, she stated that when they reached the road behind Lokmat office, the accused slowed down the scooter and poured petrol on her person from the can kept on the front side and set her on fire by lighting the matchstick. As she shouted, some people gathered and extinguished fire. Then she fainted and was unable to see anything. This is what she stated in answer to the question "when and how the incident took place". In answer to the next question, she stated that the accused brought her to the hospital in an auto. In answer to question No.4, she stated that the accused quarrelled with her—"a quarrel without any reason". Then a question was put by PW7 "whether you have any doubt on anybody" for which she replied "I have doubt on Sanjay—Pramod" (the accused). In reply to the last question, she stated that her marriage was scheduled to take place on 2.12.1991. The duration of the recording of the statement was shown as 45 minutes from 3.15 to 4.00 a.m. It was endorsed on Ext.37 that none else was present and after reading over the statement, thumb impression was put by Veena. PW7 clarified that the statement was

A given by her in Marathi language with English words here and there. The High Court commented that the language found in Ext.37 could not have been that of an educated person well versed in Marathi language hailing from a traditional Marathi family. One of us (Naolekar, J.) who is familiar with Marathi language has also formed that impression on going through the original of Ext.37. The comment of the High Court that "the lady might have narrated B something which the Executive Magistrate appeared to have recorded in his own language" and that the Magistrate later on reproduced his recollection of the narration, cannot be brushed aside. The High Court also commented on the fact that PW7 would not have got her thumb impression because her thumbs were burnt and that the thumb impression alleged to have been C affixed to the statement may not be her thumb impression but in all probability it is the impression of the toe of the leg on which the marks of stamp ink were found at the time of inquest. Therefore the endorsement "thumb impression of Veena" below the mark may not be correct. The further comment of the High Court is in regard to the question posed by PW7 at the end enquiring whether she was suspecting anybody. If the version implicating the accused D in clear terms has already been given in the earlier part of her statement, this question and answer thereto becomes meaningless. The further question whether she was married was also meaningless. The High Court was therefore of the view that the principle that the dying declaration should be free from slightest doubt is not satisfied and that Ext.37 did not inspire confidence in E order to base the conviction on such document. Though the High Court further commented on certain erasures/corrections, we are not inclined to attach much importance to them.

The overall picture we get is that the Executive Magistrate—PW7 did contact the victim and record her statement while she was conscious and F oriented as certified by the Doctor at least for sometime if not 45 minutes. The statement read as a whole does not lead to the inference that the Executive Magistrate did not at all record the statement. In fact, no such suggestion was put to PW7 though many other suggestions were made. Though the learned counsel for the respondent has drawn our attention to the deposition of PW2 G that he denied the knowledge of any police officer or Executive Magistrate seeing his daughter throughout the period he was in the hospital, that statement does not militate against the weight of evidence available to establish his presence at the hospital.

We have however a strong doubt whether for 45 minutes, the patient H in that serious condition could go on responding to the questions of PW7

to the extent of even giving details regarding the clothes worn by her and the place from which she purchased the petrol which are really inconsequential details. Again, taking an overall perspective of the evidence, there is every reason to think that PW7 could have scribbled the gist of what Veena was speaking out and then prepared the statement in question and answer forms subsequently employing his own language. Thus, Ext.37 does not appear to be an accurate or unalloyed version of the deceased. The possibility of certain embellishments cannot be ruled out. Though, we do not discard Ext.37 as a fabricated and distorted document, it does not pass the test of total reliability. Even then, we shall proceed on the premise that the material part of the statement of Veena in regard to the actual incident that had happened after reaching the road near Lokmat building is correct. As already noted, the accused stood implicated by that statement. What follows next is the question. For finding an answer to this question, we must have regard to the other dying declaration (Ext.39)—first in point of time, in order to see whether these declarations are consistent with each other in material particulars.

Ext.39 is an entry in the hospital register made by Dr. Manohar (PW8) at the time of admitting Veena into the hospital. PW8 stated that on enquiring as to how she got burnt, she gave the reply which was reduced to writing in the register. The contents of Ext.39 are as follows:

> "Since husband was doubting me, today in the evening while we were going on scooter from road behind Lokmat building, he poured petrol on my body and set me on fire with matchstick. Petrol was there in the can in my hand."

At the top, husband's name (i.e. name of the accused) is written. Whether she pointed out to Sanjay as her husband or whether the doctor on his own guessed that the person accompanying her was husband, is a matter of doubt. However, not much turns on that.

When the doctor—PW8 was eliciting information from the patient, PW1—the Constable on duty at the hospital was present. Having heard the narration of Veena, he made a note in the MLC register as per Ext.13, which is almost the same as Ext.39. PW1 then communicated the information to the jurisdictional police station at 8.20 p.m. The message was recorded by PW6—S.I. of police.

It is now necessary to notice the contradictions between the two

A statements of the deceased incorporated in Exbs.37 and 39. They are—firstly with regard to the motive and secondly regarding the location of the petrol can on the scooter.

According to Ext.39, the victim was holding the petrol can in her hand whereas according to Ext.37, petrol can was in the dicky towards the front of
B the scooter. If what was stated in Ext.39—the 1st statement is correct, is it then possible to believe that the accused took over the petrol can from her while the scooter was in motion, removed its lid, sprinkled the petrol on her and ignited the fire with the matchstick? Such type of operation, even if possible, would have immediately attracted the attention of the deceased and
C she would have suspected foul-play. She would not have kept quiet and remained on the scooter especially when it slowed down. In fact, she stated in Ext.37 that after she was set on fire she jumped out of the scooter as the scooter was in slow motion. No sensible person placed in such situation would helplessly watch and allow the scooter driver to accomplish his design, that too on a busy road. However, if the petrol can was in the dicky as stated
D in Ext.37, the possibility of opening the petrol can without attracting her attention and suddenly sprinkling it on her clothes will be greater though even that is not an easy operation. Once the theory of holding the petrol can with her hand is accepted and the further fact that the incident happened when the scooter was in motion is also accepted, the whole prosecution story
E would be relegated to the verge of incredibility. It will be highly impracticable if not impossible to set her on fire in that manner. We cannot ignore the version in Ext. 39 about holding the petrol can on hand while testing the reliability of dying declarations.

True, the story of suicide set up by the accused as DW1 also appears
F to be incredible. If she had opened the petrol can and started sprinkling petrol on herself, it would have immediately attracted the attention of the accused and he would have stopped the scooter and thwarted her attempt.

Thus, the version of homicide set up by the prosecution as well as the version of suicide set up by the accused appear to be highly improbable and
G do not inspire confidence in the mind of the Court to believe either version. In this state of things, when two incredible versions confront the Court, the Court has to give benefit of doubt to the accused and it is not safe to sustain the conviction. The contradictions in the two dying declarations coupled with the high degree of improbability of the manner of occurrence as depicted by
H the prosecution case leaves the Court with no option but to attach little

weight to these dying declarations. It is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. It has been repeatedly pointed out that the dying declaration should be of such nature as to inspire full confidence of the Court in its truthfulness and correctness (vide the observations of Five Judge Bench in *Laxman* v. *State of Maharashtra,* [2002] 6 SCC 710). Inasmuch as the correctness of dying declaration cannot be tested by cross-examination of its maker, "great caution must be exercised in considering the weight to be given to this species of evidence". When there is more than one dying declaration genuinely recorded, they must be tested on the touchstone of consistency and probabilities. They must also be tested in the light of other evidence on record. Adopting such approach, we are unable to place implicit reliance on the dying declarations, especially when the High Court felt it unsafe to act on them. This is apart from the question whether the deceased who became unconscious at the spot (as recorded in Ext.37) with 95% burns and who was found to be in disoriented condition two hours later, was in a fit condition to talk to the doctor at the time of her admission to the hospital. We refrain from going into this aspect.

We shall now turn our attention to the evidence of non-official witnesses who, by quoting the words said to have been uttered by the deceased, implicate the accused as the culprit. PW2—the father of the deceased states that Veena told him and his wife as soon as they called on her at the hospital ward that the accused poured petrol on her person and set the fire while going on the road behind Lokmat building. She even asked him to take revenge against the accused. At that time, according to PW2, she was conscious. We find it difficult to believe this statement which has been rejected by the High Court too. It is in the evidence of PW2 that they were by the bed-side of their daughter at 9.30 or 9.45 p.m. The evidence of the first I.O.—PW6 is to the effect that he went to the hospital and contacted the doctor at the hospital at 10.15 p.m. and the doctor gave it in writing that the patient was not in a position to give the statement. About an hour later, PW13—the next I.O. made an attempt to have the statement recorded by the Executive Magistrate but he could not succeed for the reason that the duty doctor opined that the patient though conscious was disoriented and not in a fit condition to give the statement vide Ext.35. That being the situation, it is highly doubtful whether the victim was in a position to speak to her parents at about 9.45 p.m. as alleged by PW2. Another fact that makes PW2's version incredible is that admittedly he did not take any action by reporting to the police after he heard those alleged words from Veena. PW2 did not also make

A any enquiries with the accused, who according to him, was present at that time. That is not the natural course of conduct. We are, therefore, not inclined to attach any weight to the deposition of PW2 narrating the alleged statement made by the victim regarding the cause of her burns. For the same reasons, the evidence of PW3—the mother of the deceased, cannot be relied upon.

B We now come to the evidence of PW4 who was running a wayside 'hotel' outside the college gate. The High Court unhesitatingly rejected his evidence. One of the reasons given by the High Court, namely, misreading of his evidence by the trial Court in quoting the words of Veena does not appear to be correct. It is in fact agreed by the learned counsel for the C accused that the trial Court's translation of the crucial sentence in the deposition of PW4 is correct. It was rechecked by one of us. Even then, we are unable to place much reliance on the version given by this witness. PW4 stated that he was cleaning the utensils at about 7.15 p.m. when he saw a burning person running towards him shouting "Pramod, why you burnt mesave, save". Then he stated that by the time he went to the spot where D the girl was burning, 5-6 persons gathered and they were already extinguishing the fire. He then took out a bed-sheet and placed it on her. When the bed-sheet was burnt, he used a gunny bag to control the fire. He then stated that after the fire was put out, one person who was there by her side, got an auto-rickshaw and took her away. He further deposed that the scooter was lying E on the road nearby. Whether PW4 really heard the lady in flames saying "Pramod, why you burnt me" is the question. The distance between his work-place and the spot where fire was extinguished is not given in the spot map i.e., Ext.10 prepared by the I.O.—PW13. PW4 also did not mention the distance. It is doubtful whether he would have distinctly heard the name 'Pramod' (which is the second name of the accused) from the place where he was F washing the utensils. By the time he went there already some people surrounded her in a bid to extinguish the fire. Amidst the noise and chaos that would have prevailed there, it is highly doubtful that PW4 could at all hear any such words from the mouth of the victim who would have been in a state of panic and unbearable pain. Another aspect which deserves notice G in this context is that if the victim lady was crying aloud naming the accused as the culprit, the people who gathered there and extinguished the fire would not have simply allowed him to carry her to the hospital without any demur. The natural conduct would be at least to note the auto-rickshaw number and report the matter to the police but no such facts were spoken to by PW4. We are therefore of the view that the credibility of his version regarding the words H alleged to have been uttered by the victim is open to doubt as it goes against

probabilities and the natural course of conduct. At any rate, the deposition of PW4 cannot form the sole basis for conviction. A

We find no good reasons to differ with the conclusion reached by the High Court, though we do not endorse the reasoning of the High Court in totality.

B

In the result, we affirm the judgment of the High Court and dismiss the appeal.

VM. Appeal dismissed.