HIRAMAN

*v.*

STATE OF MAHARASHTRA

(Criminal Appeal No. 1288 of 2008)

JANUARY 31, 2013

**[A.K. PATNAIK AND H.L. GOKHALE, JJ.]**

*Evidence Act, 1872 – s.32 – Relevance of dying declarations – Approach to be adopted by the Courts with respect thereto – Held: By enacting s.32(1) in the Evidence Act, the legislature has accorded a special sanctity to the statement made by a dying person as to the cause of his own death – This is by virtue of the solemn occasion when such statement is made – Besides, when such statement is made at the earliest opportunity without any influence being brought on the dying person, there is absolutely no reason to take any other view for the cause of his or her death – Absence of any corroboration cannot take away its relevance – Exaggerated doubts, on account of absence of corroboration, will only lead to unmerited acquittals, causing grave harm to the cause of justice and ultimately to the social fabric – On facts, the dying declarations of the appellant's wife gave the real cause of her burn injuries – The victim having suffered 91% burn injuries, there was hardly any time to secure the presence of competent magistrate or to record her statement in a detailed question-answer form – Absence of these factors itself did not take away the evidentiary value of the recorded statement – There were two dying declarations recorded at the earliest opportunity – They contained the motive for the crime, and the reasons as to why the deceased suffered the burn injuries viz., the greed of the appellant to which the deceased had refused to succumb – As far as her statements viz., that the appellant had poured kerosene and set her on fire is concerned, there is no reason to discard it considering the fact that it was made*

*at the earliest opportunity and on a solemn occasion – The defence put up a story which was totally inconsistent with the facts on record, and is a clear afterthought and therefore unacceptable – The prosecution proved its case beyond any reasonable doubt.*

**The appellant's wife died an unnatural death, having suffered 91% burn injuries. The trial court held the appellant responsible for the same, principally on the basis of her dying declarations, and convicted him for cruelty and murder under Sections 498-A and 302 of IPC. The conviction u/s 302 of IPC was confirmed by the High Court in Criminal Appeal, though the one under Section 498-A of IPC was set-aside for the lack of sufficient evidence. The Courts below accepted the two dying declarations of deceased 'C' as giving the correct cause for the burn injuries viz. that they were caused by the appellant. They rejected the defence of the appellant that he was nowhere near the deceased at the time of the incident and that he was not responsible for the same. The judgment of the High Court was challenged before this Court for being rendered solely on the basis of dying declarations.**

**The instant appeal thus raises question about the relevance of dying declarations, and the approach to be adopted by the Courts with respect thereto.**

**Dismissing the appeal, the Court**

**HELD: 1.1. The dying declarations of the appellant's wife gave the real cause of her burn injuries. The victim 'C' having suffered 91% burn injuries, there was hardly any time to secure the presence of competent magistrate or to record her statement in a detailed question-answer form. Absence of these factors itself will not take away the evidentiary value of the recorded statement. [Para 8] [131-F-G]**

1.2. By enacting Section 32 (1) in the Evidence Act, 1872, the legislature has accorded a special sanctity to the statement made by a dying person as to the cause of his own death. This is by virtue of the solemn occasion when the statement is made. Besides, when the statement is made at the earliest opportunity without any influence being brought on the dying person, there is absolutely no reason to take any other view for the cause of his or her death. The statement has to be accepted as the relevant and truthful one, revealing the circumstances which resulted into his death. Absence of any corroboration can not take away its relevance. Exaggerated doubts, on account of absence of corroboration, will only lead to unmerited acquittals, causing grave harm to the cause of justice and ultimately to the social fabric. With the incidents of wives being set on fire, very unfortunately continuing to occur in our society, it is expected from the Courts that they approach such situations very carefully, giving due respect to the dying declarations, and not being swayed by fanciful doubts. [Para 17] [138-G-H; 139-A-C]

1.3. In the present case there are two dying declarations recorded at the earliest opportunity. They contained the motive for the crime, and the reasons as to why the deceased suffered the burn injuries viz., the greed of the appellant to which the deceased had refused to succumb. As far as her statements viz., that the appellant had poured kerosene and set her on fire is concerned, there is no reason to discard it considering the fact that it was made at the earliest opportunity and on a solemn occasion. The defence put up a story which is totally inconsistent with the facts which have come on record, and is a clear afterthought and therefore unacceptable. In fact this case clearly shows an attempt to put up a totally false defence. The prosecution has undoubtedly proved its case beyond any reasonable

A **doubt. [Para 18] [139-D-F]**

**1.4. In view of the above legal position and facts on record, there is no reason to interfere in the judgment and order rendered by the trial court as modified and confirmed by the High Court. [Para 19] [139-G]**

B

*Khushal Rao Vs. State of Bombay* **AIR 1958 SC 22: 1958 SCR 552;** *Mannu Raja Vs. State of Madhya Pradesh* **1976 (3) SCC 104: 1976 (2) SCR 764;** *Gulam Hussain Vs. State of Delhi* **2000 (7) SCC 254: 2000 (2) Suppl. SCR 141;** C *Kanaksingh Raisingh Vs. State of Gujarat* **AIR 2003 SC 691;** *Babu Lal Vs. State of State of Madhya Pradesh* **AIR 2004 SC 846: 2003 (5) Suppl. SCR 54;** *Shivaji Sahebrao Bobade Vs. State of Maharashtra* **AIR 1973 SC 2622:1974 (1) SCR 489;** *State of U.P. Vs. Krishna Gopal* **AIR 1988 SC 2154: 1988 (2)** D **Suppl. SCR 391;** *Gurbachan Singh Vs. Satpal Singh* **AIR 1990 SC 209: 1989 (1) Suppl. SCR 292;** *Gangadhar Behera Vs. State of Orissa* **AIR 2002 SC 3633;** *Sucha Singh Vs. State of Punjab* **2003 (7) SCC 643: 2003 (2) Suppl. SCR 35;** *Lakhan Vs. State of Madhya Pradesh* **2010 (8) SCC 514:** E **2010 (9) SCR 705 – relied on.**

*P. Mani Vs. State of Tamil Nadu* **2006 (3) SCC 161: 2006 (2 ) SCR 486 – referred to.**

**Case Law Reference:**

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|---|---|---|
| **2006 (2) SCR 486** | **referred to** | **Para 7** |
| **1958 SCR 552** | **relied on** | **Para 7** |
| **1976 (2) SCR 764** | **relied on** | **Para 10** |
| G **2000 (2) Suppl. SCR 141** | **relied on** | **Para 11** |
| **AIR 2003 SC 691** | **relied on** | **Para 12** |
| **2003 (5) Suppl. SCR 54** | **relied on** | **Para 12** |
| H **1974 (1) SCR 489** | **relied on** | **Para 13** |

| | | | A |
|---|---|---|---|
| **1988 (2) Suppl. SCR 391** | **relied on** | **Para 14** | |
| **1989 (1) Suppl. SCR 292** | **relied on** | **Para 15** | |
| **AIR 2002 SC 3633** | **relied on** | **Para 16** | |
| **2003 (2) Suppl. SCR 35** | **relied on** | **Para 16** | B |
| **2010 (9) SCR 705** | **relied on** | **Para 16** | |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1288 of 2008.

From the Judgment & Order dated 28.06.2005 of the High Court of Judicature at Bombay Bench at Aurangabad in Criminal Appeal No. 31 of 2005. C

Javed Mahmud Rao for the Appellant.

Sanjay V. Kharde, Asha Gopalan Nair for the Respondent. D

The Judgment of the Court was delivered by

**H.L. GOKHALE J.** 1. This Criminal Appeal raises the question about the relevance of dying declarations, and the approach to be adopted by the Courts with respect thereto. The appellant's wife, Chandrakala Hiraman Murkute, died an unnatural and a very painful death at about 2 a.m. on 7.4.2000 in a village in Jamkhed Taluka of District Ahmednagar, State of Maharashtra, having suffered 91% burn injuries in the previous night leading to cardio-respiratory failure. The First Adhoc Addl. Sessions Judge, Ahmednagar held the appellant responsible for the same, principally on the basis of her dying declarations, and convicted him for cruelty and murder under Sections 498-A and 302 of the Indian Penal Code (I.P.C. for short) by his judgment and order dated 16.8.2004 in Sessions Case No.103 of 2000. The conviction U/s 302 of IPC was confirmed by the Aurangabad Bench of the High Court of Judicature at Bombay in Criminal Appeal No.31 of 2005, though the one under Section 498-A of I.P.C was set-aside for the lack E F G H

A of sufficient evidence. The Courts below have accepted the two dying declarations of deceased Chandrakala as giving the correct cause for the burn injuries viz. that they were caused by the appellant. They have rejected the defence of the appellant that he was nowhere near the deceased at the time
B of the incident and that he was not responsible for the same. In view of this conviction under Section 302 I.P.C., the appellant is required to undergo imprisonment for life, and to pay a fine of Rs.500/-, in default suffer a rigorous imprisonment for three months. This judgment of the High Court dated 28.6.2005 in
C Crl. Appeal No. 31/2005 is being challenged for being rendered solely on the basis of dying declarations.

**The facts leading to the present appeal are as follows:-**

2. Deceased Chandrakala had been married to the
D appellant since a long time, and had three children from the marriage viz., Bapu, aged about 20-22 years and married at the time of the incident, Ramesh aged about 14 years, and daughter Shobha (whose age has not been mentioned). As per the charge-sheet, the appellant is stated to have poured
E kerosene on Chandrakala and set her on fire at about 8 p.m. on 6.4.2000. She was admitted in the rural hospital, Jamkhed immediately at 9:15 p.m. One Dr. Eknath Mundhe (PW-5) was on duty at that time, and he recorded the history of injuries (exhibit 33) at about the same time in the following words –

F *"H/o Homicidal burns by husband as she was not willing to perform his marriage with her sister and he was also demanding gold on 6.4.2000 at about 8 p.m."*

Thus as per this writing, the appellant was insisting that
G Chandrakala bring gold from her parents, and that he be permitted to marry her sister. Chandrakala refused to acquiesce to either of these demands, and, therefore, she was given serious burn injuries by the appellant on that fateful night. According to their younger son Ramesh (DW-1) the deceased
H was taken to the hospital by her family members. That being

so, this recording by the doctor assumes significance since it must have been made in their presence. After Head Constable Dagadu Baba Kharat (PW-4) came for duty to that hospital, the above duty doctor informed him about the incident, and also that Chandrakala was still in a position to make a statement. PW-4 recorded the second statement of Chandrakala (exhibit 28) in the presence of PW-5 and the staff nurse after PW-5 certified that she was in a position to give a statement. Chandrakala stated that the appellant poured kerosene on her from a ten liter drum, and then set her on fire since she declined to accept his demand of a golden ring of one tola, and transfer of the land belonging to her maternal uncle to him. According to this statement one neighbour Baba Saheb Vitekar had extinguished the fire, and then she was brought to the hospital. Thereafter, her thumb impression was obtained on the statement after reading it to her. This second dying declaration was treated as the First Information Report (F.I.R.) and was registered at 10:10 p.m. as Crime No. 44/2000 under Section 307 I.P.C. for attempt to murder. Chandrakala was very much in a position to make a statement at that time, and was not under the influence of any drug since she was injected with sedatives only at about 10:30 p.m. At the time of recording of this statement her two sons as well as the appellant were present since, as stated by Ramesh (DW-I), all the family members had taken her to the hospital. The Appellant has also stated in his statement under Section 313 of Cr.P.C that he too had gone to the hospital. Mother and brother of Chandrakala were however not present at that time as they could reach the hospital only after she had passed away. After her death the charge was altered from the one under Section 307 to the one under Section 302 I.P.C.

3. During the trial, the prosecution examined five witnesses. PW-1 Dr. Abhijit Boralkar who performed the post-mortem gave the cause of death as follows:-

*"Death due to cardio-respiratory failure (due) to shock*

A *due to extensive burns 91% superficial to deep."*

Thus, there is no dispute over the cause of death. The question is as to how she received the burn injuries. The mother (PW-2) and brother (PW-3) of Chandrakala supported her version as to why, she suffered the burn injuries viz., that appellant was insisting that she fetch a golden ring, and also to transfer her maternal uncle's land to him for last about two months, and that her refusal has led to this gruesome act by him. The defence of the appellant in this behalf was, however, inconsistent. In his statement under Section 313 of Cr.PC he indicated the probability of accidental death due to bursting of the stove. The investigating officer P.I. Kandre, however categorically stated that during examination of the place of occurrence no furnace, stove or cooking articles were found over there. The appellant examined three witnesses in his defence. Their younger son Ramesh (DW-1) stated on the other hand that his mother had committed suicide. The cause for committing the suicide as stated by Ramesh was however very flimsy viz., that he had asked his mother to give him Rs.2 for watching a movie, which she had declined. This had led the appellant to scold her, because of which she went inside the house and bolted the door. Later on when Ramesh was playing outside the house, and when his elder brother and father were also outside the house, his sister Shobha who was playing at the neighbour's house raised the alarm that Chandrakala had set herself on fire. According to Ramesh the appellant climbed on the roof, removed one of the tin sheets and jumped inside, to remove the bolt of the door when it was found that the deceased was lying on the floor in a burnt condition. A close relative of the appellant viz., Mhase Nagu Vitkar (DW-2) was examined who also gave similar evidence. As far as the statement of Ramesh (DW-1) is concerned, the same was discarded for the reason that it was a hearsay based on the statement allegedly made by Shobha to him and Shobha was not examined. Besides, the house of the neighbour where Shobha was supposed to have been playing, was at a distance

of about 150 feet from the house of deceased, and there were many houses in between the two houses. Therefore, her statement of coming to know that Chandrakala had set herself on fire could not be accepted, since Shobha would not have been able to know the same from such a distance. Similarly, the statement of Ramesh that his father had jumped into the house after removing the tin sheet of the roof could not be accepted for the reason that though he is claimed to have suffered an injury in the process, at the time of his arrest in the night of 6.4.2000, the appellant declined to go to any hospital (as the arrest panchnama records) when asked whether he suffered from any pain or injury. This leads to the discarding of the statement of Dr. Satpute (DW-3) also, who is said to have examined the accused two days subsequent to the incident, on 8.4.2000, and noticed abrasions on his left elbow and arm, and a burn injury on left elbow. The statement of DW-2 was also not accepted for the reasons that he was a person of 70 years of age who accepted that he could not see beyond 15-20 feet. He would not have come to know of the incident when his house is situated at a distance of 150 feet from the place of occurrence.

**Consideration of the submissions on facts:**

4. The question before us is as to how Chadrakala received the burn injuries. There are two versions before us viz., that the appellant poured the kerosene on her, and the other that the deceased poured it on herself. The version given by the deceased is contained in her statements recorded at the earliest opportunity by two different persons who had no reason to record what they have recorded, unless she had stated so. And considering the solemn occasion when she was making the statements, there was no reason to discard the same as being untrue. The first statement was recorded at 9:15 p.m., i.e. just one hour and fifteen minutes after the incident when she was brought to the hospital. The second statement was also recorded within an hour thereafter at about 10:10 p.m.

A Chandrakala was fully conscious at that time and was required to be given sedatives only at about 10:30 p.m. This statement assumes significance since it was recorded when her family members including the appellant were present. Besides, her brother and mother have subsequently confirmed her statement
B that her husband was greedy and used to harass her for his demands. There was no occasion of their tutoring her since they reached the hospital only after her death. It was submitted on behalf of the appellant that the failure of the prosecution to examine Baba Saheb Vitekar (who extinguished the fire) was
C fatal. In this connection, we must note that this Baba Saheb was not present when kerosene was poured on Chandrakala and the fire started. He came lateron to extinguish the fire and could not have thrown any light as to how the incident took place.

D 5. The learned Counsel for the appellant principally submitted that as far as the two dying declarations of Chandrakala are concerned, there was no corroboration to the same, and the uncorroborated dying declarations could not be accepted. It was contended that there is a variation between
E the two dying declarations with respect to the reasons for setting her on fire. Now as far as this variation between the two statements is concerned, it is only this much that in her first statement Chandrakala had stated that the appellant used to harass and ill-treat her because he was demanding gold from
F her, and was asking her to marry her sister to him for which she was not agreeable. In the second dying declaration she had once again stated that he was demanding gold from her, but had also added that he had sought the transfer of the land belonging to her maternal uncle to him. This time she has not
G stated about his insisting to marry her sister. The demand for gold is the common factor in both the statements. In the first statement she has additionally referred to his insisting on marrying her sister, whereas in the second one she has referred to his demand for the agricultural land of her maternal uncle.
H The Sessions Court and the High Court have not given any

importance to this variation, and in our view rightly so. This is because one must understand that Chandrakala had suffered 91% burn injuries. Earlier, the duty-doctor had asked her as to how the incident had occurred, and later on the Head Constable on duty had repeated the query. Any person in such a condition will state only that much which he or she can remember on such an occasion. When asked once again, the person concerned can not be expected to repeat the entire statement in a parrot-like fashion. One thing is very clear in both the statements viz., the greed of the appellant and her being harassed on that count. Besides, it is relevant to note that her mother and brother have both corroborated her statement that the appellant was demanding gold and land from her. Initially Chandrakala spoke about this demand for gold and later also for the land. This cannot in any way mean an attempt to improve. Similarly, the non-mention on the second occasion of his insistence to marry her sister cannot mean an omission to discredit her statements.

6. As against that, as far as the version put up by the appellant is concerned, it is based on the hearsay version of his daughter Shobha who was supposed to be playing at a house at a distance of 150 feet from appellant's house. She has not been examined and her version as reproduced by Ramesh is pressed into service, and an attempt is thus made to put up a probable parallel story though the story is highly improbable bordering on falsehood. It is not placed on record that Chandrakala was suffering from any psychological disorder either. The Courts below rightly rejected this parallel version as there is no foundation to the same. This is as against the one which is propounded by the prosecution, which in the circumstances is the only acceptable version. Initially, the appellant took the defence on 19.8.2002 that Chandrakala perhaps died due to an accident. This can be seen from his answer to Question No.20 in the course of statement U/s 313 of Cr.PC, where he stated as follows:-

A *"I had done nothing. Electricity was off. I was not present at the house. She might be doing cooking at stove. Whether there was outburst of stove is not known to me. My son had told me that his mother had been injured and then I went at the hospital. Thereafter, Police caught me*
B *and took me to jail. Thereafter, I was there inside. I had nothing to say more."*

Thus at that stage he did not state that he jumped into the house to rescue his wife. Besides, he stated that he did not want to
C lead any defence witness. Nearly, two years later he examined defence witnesses on 15.7.2004 to raise the plea of suicide, which was clearly an afterthought. It is very clear that Ramesh (DW-1) was put up to save the appellant from the accusation. It is also relevant to note that the appellant was absconding for a period of over 20 months during the trial from 26.6.2002 to
D 14.4.20014, and it was much later that he surrendered himself. There was no reason for him to abscond if he had not indulged in the act of pouring kerosene on his wife.

**Submissions on Law**

E

7. The learned Counsel for the appellant relied upon the judgment of a bench of two judges of this Court in *P. Mani Vs. State of Tamil Nadu* reported in [2006 (3) SCC 161] to canvass that uncorroborated dying declaration must not be
F accepted. In this connection, it must be firstly noted that in that case the son and daughter of the deceased lady (who had died due to burn injuries) had categorically stated that she was suffering from depression and she had made an attempt to commit suicide a week prior to the date of the incident. Besides, there was no material to show that the appellant was
G absconding or he could not be arrested despite attempts having been made therefor. Even in that matter the Court specifically observed as follows:-

"**14.** *Indisputably conviction can be recorded on the*

H

*basis of the dying declaration alone but therefore the same must be wholly reliable."*

Thus it must be noted that this decision was rendered in the facts of that case where the dying declaration was not found to be wholly reliable. The judgment does not in any way deviate from the well settled proposition that a dying declaration can be the sole basis for conviction.

8. A ground has been raised in this appeal by pointing out the defect with respect to the statement recorded by the doctor that there is absence of time of recording it, but the time can be ascertained from the marginal endorsement made thereon. A further ground has been raised in this appeal that the second statement of the deceased recorded by Head Constable Kharat (PW-4) can also not be treated as a dying declaration and cannot be read as an evidence since it was neither recorded by the gazetted officer i.e. Chief Judicial Magistrate nor in question-answer form. The appellant has relied upon observation of this Court in sub-para (5) of para 16 of the judgement of a bench of three judges in *Khushal Rao Vs. State of Bombay* reported in [AIR 1958 SC 22] in this behalf. The submission is misconceived for the reason that the proposition in sub-para (5) of para 16 cannot be cut off from the other propositions in this para which lay down the other parameters governing the approach towards the relevance of the dying declarations. When we look to those parameters, there is no reason not to accept that the dying declarations of Chandrakala gave the real cause of her burn injuries. Chandrakala having suffered 91% burn injuries, there was hardly any time to secure the presence of competent magistrate or to record her statement in a detailed question-answer form. Absence of these factors itself will not take away the evidentiary value of the recorded statement. The parameters from this paragraph are as follows:-

**"16.** *On a review of the relevant provisions of the Evidence Act and of the decided cases in the different*

A *High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction*
B *unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than*
C *other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying*
D *declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all*
E *the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient*
F *light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had*
G *several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."*

H 9. In this behalf we may as well profitably refer to

paragraph 11 of this very judgment with respect to the rationale in accepting the version contained in the dying declaration. This Court (per B.P. Sinha, J. as he then was) observed in this para 11 as follows:-

> **"11.** *The legislature in its wisdom has enacted in Section 32(1) of the Evidence Act that "When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question", such a statement written or verbal made by a person who is dead (omitting the unnecessary words) is itself a relevant fact. This provision has been made by the legislature, advisedly, as a matter of sheer necessity by way of an exception to the general rule that hearsay is no evidence and that evidence which has not been tested by cross-examination, is not admissible. The purpose of cross-examination is to test the veracity of the statements made by a witness. In the view of the legislature, that test is supplied by the solemn occasion when it was made, namely, at a time when the person making the statement was in danger of losing his life. At such a serious and solemn moment, that person is not expected to tell lies; and secondly, the test of cross-examination would not be available. In such a case, the necessity of oath also has been dispensed with for the same reasons. Thus, a statement made by a dying person as to the cause of death, has been accorded by the legislature, a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that the person making the statement was not in expectation of death, not that that circumstance would affect the admissibility of the statement, but only its weight. It may also be shown by evidence that a dying declaration is not reliable because it was not made at the earliest opportunity, and, thus,*

A *there was a reasonable ground to believe its having been put into the mouth of the dying man, when his power of resistance against telling a falsehood, was ebbing away; or because the statement has not been properly recorded, for example, the statement had been recorded*
B *as a result of prompting by some interested parties or was in answer to leading questions put by the recording officer, or, by the person purporting to reproduce that statement. These may be some of the circumstances which can be said to detract from the value of a dying*
C *declaration. But in our opinion, there is no absolute rule of law, or even a rule of prudence which has ripened into a rule of law, that a dying declaration unless corroborated by other independent evidence, is not fit to be acted upon, and made the basis of a conviction."*

D **(emphasis supplied)**

10. The judgment in *Khushal Rao* has been consistently referred to and followed. Thus, after referring to the propositions in Khushal Rao, this Court observed in para 7 of *Mannu Raja*
E *Vs. State of Madhya Pradesh* reported in [1976 (3) SCC 104] to the following effect:-

**"7.** *It was contended by the learned Counsel for the appellants that the oral statement which Bahadur Singh made cannot, in the eye of law, constitute a dying*
F *declaration because he did not give a full account of the incident or of the transaction which resulted in his death. There is no substance in this contention because in order that the Court may be in a position to assess the evidentiary value of a dying declaration, what is*
G *necessary is that the whole of the statement made by the deceased must be laid before the Court, without tampering with its terms or its tenor. Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. Indeed, quite*
H *often, all that the victim may be able to say is that he was*

*beaten by a certain person or persons. That may either be due to the suddenness of the attack or the conditions of visibility or because the victim is not in a physical condition to recapitulate the entire incident or to narrate it at length. In fact, many a time, dying declarations which are copiously worded or neatly structured excite suspicion for the reason that they bear traces of tutoring."*

**(emphasis supplied)**

11. *Khushal Rao and Mannu Raja* have been referred to and followed in *Gulam Hussain Vs. State of Delhi* reported in [2000 (7) SCC 254]. In para 8 thereof, this Court observed as follows:-

> **"8.** *Section 32 of the Evidence Act is an exception to the general rule of exclusion of hearsay evidence and the statement made by a person, written or verbal, of relevant facts after his death is admissible in evidence if it refers to the cause of his death or any circumstances of the transactions which resulted in his death. To attract the provisions of Section 32, the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Evidence Act....."*

12. In a case almost identical to the present one, in *Kanaksingh Raisingh Vs. State of Gujarat* reported in [AIR 2003 SC 691], this Court upheld the conviction in the case of pouring kerosene and setting the wife on fire by holding that so long as the dying declaration is voluntary and truthful, there was no reason why it should not be accepted. In *Babu Lal Vs. State of State of Madhya Pradesh* reported in [AIR 2004 SC

A 846], this Court had following to say with respect to dying declaration in para 7 which is as follows:-

> "7.....*A person who is facing imminent death, with even a shadow of continuing in this world practically*
> B *non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to*
> C *concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his maker with a lie in his mouth" (Nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in*
> D *extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an*
> E *obligation equal to that which is imposed by a positive oath administered in a court of justice (See R.V. Woodcock 1 Leach 500)."*

13. The appellant had sought to create a doubt about the
F prosecution case. In this behalf we must note that a doubt sought to be raised has to be a credible and consistent one and must be one which will appeal to a reasonable mind. We may profitably refer to what this Court has said in this behalf in some of the leading judgments. Thus, in *Shivaji Sahebrao*
G *Bobade Vs. State of Maharashtra* reported in [AIR 1973 SC 2622] Krishna Iyer, J. observed for a bench of three judges in paragraph 6 as follows:-

> "6.....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence
> H and to the soothing sentiment that all acquittals are always

good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt....."

".....The evil of acquitting a guilty person light-heartedly as a learned author Glanville Williams in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless....."

".....a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....."

14. The propositions in *Shivaji Sahebrao Bobade* were quoted with approval in *State of U.P. Vs. Krishna Gopal* reported in [AIR 1988 SC 2154], and further this Court observed as follows in paragraph 13 (per M.N. Venkatachaliah, J. as he then was):-

"13..... *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere*

A *vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case....."*

B 15. In *Gurbachan Singh Vs. Satpal Singh* reported in [AIR 1990 SC 209], this Court observed at the end of para 4 as follows:-

*"4.....There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute*
C *standard in either of the cases. See the observations of Lord Denning in Bater v. Bater, (1950) 2 All ER 458 at p.459, but the doubt must be of a reasonable man. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to*
D *case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape*
E *than punish an innocent. Letting guilty escape is not doing justice, according to law."*

16. These propositions have been consistently followed by this Court in *Gangadhar Behera Vs. State of Orissa* reported in [AIR 2002 SC 3633], *Sucha Singh Vs. State of Punjab*
F reported in [2003 (7) SCC 643] and *Lakhan Vs. State of Madhya Pradesh* reported in [2010 (8) SCC 514].

**Hence, the Conclusion:**

G 17. Thus as can be seen, by enacting Section 32 (1) in the Evidence Act, the legislature has accorded a special sanctity to the statement made by a dying person as to the cause of his own death. This is by virtue of the solemn occasion when the statement is made. Besides, when the
H statement is made at the earliest opportunity without any

influence being brought on the dying person, there is absolutely no reason to take any other view for the cause of his or her death. The statement has to be accepted as the relevant and truthful one, revealing the circumstances which resulted into his death. Absence of any corroboration can not take away its relevance. Exaggerated doubts, on account of absence of corroboration, will only lead to unmerited acquittals, causing grave harm to the cause of justice and ultimately to the social fabric. With the incidents of wives being set on fire, very unfortunately continuing to occur in our society, it is expected from the Courts that they approach such situations very carefully, giving due respect to the dying declarations, and not being swayed by fanciful doubts.

18. In the present case there are two dying declarations recorded at the earliest opportunity. They contained the motive for the crime, and the reasons as to why the deceased suffered the burn injuries viz., the greed of the appellant to which the deceased had refused to succumb. As far as her statements viz., that the appellant had poured kerosene and set her on fire is concerned, there is no reason to discard it considering the fact that it was made at the earliest opportunity and on a solemn occasion. The defence put up a story which is totally inconsistent with the facts which have come on record, and is a clear afterthought and therefore unacceptable. In fact this case clearly shows an attempt to put up a totally false defence. The prosecution has undoubtedly proved its case beyond any reasonable doubt.

19. In view of the above legal position and facts on record, we see no reason to interfere in the judgment and order rendered by the learned Sessions Judge as modified and confirmed by the High Court.

20. The appeal is, therefore, dismissed.

B.B.B. Appeal dismissed.