

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.108 OF 2020

Manoj Ramaji Chvare

Age 33 years, Occ.

R/at: Wakanpada, Po. Pelhar,

Nallasopara East

...Appellant

vs.

The State of Maharashtra

(Through Police station officer,

Waliv Police Station)

...Respondent

**VISHAL
SUBHASH
PAREKAR**

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WITH

CRIMINAL APPEAL NO.1195 OF 2023

Baburao Nimbaji Yesankar

Age years, Occ.

R/at: Wakanpada, Po. Pelhar,

Nallasopara East

...Appellant

V/s

The State of Maharashtra

(Through Police station officer,

Waliv Police Station)

...Respondent

Mr. Tapan Thatte a/w. Mr. Shivraj Kunche, Mr. Akshay Dingale, for the Appellant in Cri. Appeal No. 108 of 2020.

Mr. Amit Mane, for the Appellant in Cri. Appeal No. 1195 of 2023.

Ms. Sharmila Kaushik, APP for Respondent-State.

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

RESERVED : 16th MARCH, 2026

PRONOUNCED : 8th JUNE, 2026

JUDGMENT : (Per Shreeram Shirsat, J.)

1. The present Appeals have been filed by the Appellants challenging the impugned Judgment and Order dated 16.07.2019 passed by the Additional Sessions Judge-1, Vasai in Sessions Case no. 98/2017 whereby the Appellants have been convicted under section 235(2) of Cr.P.C. for the offences punishable under section 302 r/w 34 of the Indian Penal Code (IPC), 1860 and have been sentenced to undergo Imprisonment for life and pay a fine of Rs. 1,000/- and in default to undergo Rigorous Imprisonment for 1 month.

2. Although the Appellants have preferred two separate appeals, both the Appeals are being disposed of by a common order since the Appellants are convicted vide common judgment and order dated 16/7/2019 passed by the Additional Sessions Judge-1, Vasai in Sessions Case no. 98/2017. For the sake of brevity and contextual convenience, the Appellants are referred herein as to Appellant No 1 who is Accused No 1 Manoj Ramji Chavre and who has preferred Appeal No 108/2020 and Appellant No 2 who is Accused No 2 Baburao Nimbaji Yesenkar and who has preferred Appeal No 1195/2023.

3. Brief facts of the prosecution's case are as under:

a) On 26/06/2017, a First Information Report came to be

registered based on the statement of the deceased Anita Gajanan Wankhede, aged 33 years, recorded by the police at Sir D.M. Petit Municipal Hospital, Vasai. It is the case of the prosecution that the deceased was residing with Accused No. 1 Manoj Ramaji Chavare and Accused No. 2 Baburao Nimbaji Yesankar in a room at Wakanpada, Taluka- Vasai, District- Palghar. It is further the case that the deceased was in a love relationship with Accused No. 1 Manoj. It is further the case that there used to be frequent quarrels of Accused No. 1 Manoj with the deceased by suspecting her character.

b) It is further the case that on 26/06/2017 at about 11.00 a.m., the deceased had gone to Vasai Phata in search of work but could not find any and therefore returned home by 1.45 p.m. It is the case that Accused No. 1 questioned the deceased regarding her whereabouts, following which he started abusing and beating her. It is further the case that at about 4.00 p.m., the accused again raised a quarrel with the deceased, whereupon original Accused No. 2 (Baburao) poured kerosene on the deceased and pushed her onto the floor. It is further the case that when the deceased fell down, original Accused No. 1 (Manoj) threw a lit matchstick on her, thereby setting her ablaze. It is further the case that she raised an alarm and neighbouring persons gathered, following which she was taken

to the hospital.

c) It is further the case that the deceased was admitted at Sir D.M. Petit Municipal Hospital, Vasai, where her statement was recorded on 26/06/2017 in the presence of Special Executive Magistrate Vidya Chetan Patil (P.W. 6) and Medical Officer Dr. Heena Sudhakar Chavne (P.W. 7), who endorsed that the deceased was conscious and oriented and in a fit condition to give her statement. Thereafter FIR came to be registered. The deceased thereafter succumbed to her burn injuries within 5 to 6 days of hospitalization.

d) Thereupon, the investigation was transferred to Waliv Police Station. Original Accused No. 1 Manoj was arrested on 04/07/2017 and Original Accused No. 2 Baburao was apprehended on 04/07/2017. Upon completion of investigation, a charge-sheet was filed against both accused for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code. The case was committed to the Court of Sessions, Vasai, being exclusively triable by the Sessions Court. Charges came to be framed against both the Accused/Appellants under Section 302 read with Section 34 of the Indian Penal Code, to which both the accused pleaded not guilty and claimed to be tried.

4. To bring home the guilt of the Accused-Appellant, the prosecution in all examined 08 witnesses (PW1 to PW8) :

PW. 1	Shevanti Daman Chavra	Neighbour of the deceased
PW. 2	Karina Daman Chavra	Neighbour of the deceased. Daughter of PW. 1
PW. 3	Kunda Narayan Patil	Mother of the deceased
PW. 4	Mangesh Patil	Panch Witness for the Recovery of Hair of the deceased, Matchsticks and Match Box, Kerosene Stove, Pieces of Cloth in blue and ash color, One T-shirt (dark blue), One Shirt (white), Pair of Pants (black pale color), Pair of 3/4th Pants (ash-colored) and Polythene Bag.
PW. 5	Laxmi Kalu Gudiyar	Neighbour of the deceased
PW. 6	Vidya Chetan Patil	Special Executive Magistrate (SEM)
PW. 7	Dr. Heena Chavne	Medical Officer
PW. 8	Sanjay Namdeo Choudhar	Investigating Officer

5. After hearing both sides and upon appreciation of the evidence on record, the learned Additional Sessions Judge-1, Vasai, vide judgment and order dated 16/07/2019, was pleased to convict both Accused No. 1 Manoj Ramaji Chavre and Accused No. 2 Baburao Nimbaji Yesankar for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, 1860 and sentenced each of them to undergo life imprisonment and to pay a fine of Rs. 1000/-, in default to suffer rigorous imprisonment of one month.

6. Being aggrieved by the said order of conviction recorded by a Judgment in Sessions Case No. 98/17, dated 16/07/2019, passed by the Additional Sessions Judge-1, Vasai, the Appellants have

approached this Court by way of appeal. Both the Appellants have preferred separate appeals.

7. Heard Adv. Tapan Thatte in Appeal No 108/2020, Adv Amit Mane in Appeal No 1195/2023 and Ld. APP Sharmila Kaushik in both the appeals.

8. The Learned Counsel for Appellant No.1 submitted that the prosecution has failed to establish the cause–effect relationship between the alleged act of the Appellants and the death of the deceased. It was argued that for proving homicidal death, there must be a clear nexus between the act committed by the accused and the resulting death. According to the Ld. Counsel such causal connection has not been established in the present case. It was further submitted that the impugned judgment of the Trial Court does not specifically record a finding that the death was homicidal. He submitted that at best, the case may fall under Section 308 IPC, which is attempt to commit culpable homicide. The Ld. Counsel further pointed out several inconsistencies in the medical records. He submitted that PW-7, the Doctor has stated in her testimony that the deceased had 70% burn injuries. However, the post-mortem report records 95% burns. He further pointed out that similar inconsistencies are reflected in OPD papers and medical records. According to the Ld. Counsel, these

discrepancies create serious doubt regarding the nature and extent of injuries and the actual cause of death. The Ld. Counsel further submits that although the post-mortem report mentions the probable cause of death as death due to shock as a result of burns, it only establishes unnatural death and not necessarily homicidal death attributable to the accused. It was further argued that, the injury occurred on 26/6/2016, while death occurred on 1/7/2016 i.e., after five days. According to the Ld. Counsel, this gap indicates that the death cannot be directly attributed to the alleged act of the accused. The Ld. Counsel further submitted that the examination of the accused under Section 313 CrPC is defective. According to him no question was put to the Appellants regarding the post mortem report and the report of Chemical Analyser. The Ld. Counsel further submitted that as per testimony of PW 7, the deceased was first treated by Dr. Balaji, however, Dr. Balaji was not examined by the prosecution and it was argued that the first treating doctor is a crucial witness in burn cases and his non-examination creates a gap in the prosecution evidence. The Ld. Counsel further argued that Inquest Panchnama prepared under Section 174(1) CrPC must prima facie indicate the nature of death, i.e., whether it appears homicidal, accidental, or suicidal whereas in the present case, the inquest panchnama does not properly record circumstances indicating homicidal death. The Ld. Counsel further submitted that Exhibits 30 and 31 do not establish any

incriminating inference against the Appellants and that they have not been properly proved. By placing reliance on Sections 61 ,63 ,67, 77 of the Evidence Act, it was submitted that mere production of a public document is not sufficient unless the signature or handwriting is duly proved under Section 67 of the Evidence Act.

9. The Ld. Counsel appearing for the Appellant in Appeal No 1195/23 submitted that the trial court erred in convicting the Appellant as the offence has not been established beyond reasonable doubt to convict the Appellant. He submitted that the written dying declaration is under shadow of doubt as she was unstable as per the medical records. He further submitted that Appellant No 2 was not having any affair with the deceased and it is not the case either that he was doubting the character of the deceased and therefore there was no motive for him to pour kerosene. The Ld. Counsel alternatively submitted that there was no intention to kill the deceased and nowhere it is the case of the prosecution that the Appellant No 2 has acted in a cruel manner. He submitted that at the most he had knowledge but no intention to cause such injury which would result in death. The Ld. Counsel therefore submitted that the Appellant No 2 deserves to be acquitted.

10. In support of their contentions, the Ld. Counsel for the

Appellants have relied upon the following judgments:

1. *State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr.*¹
2. *Rajkumar alias Suman vs. State (NCT of Delhi)*²
3. *Prakash vs. State of Karnataka*³
4. *Kalu Ram vs. State of Rajasthan*⁴
5. *Dattatraya vs. The State of Maharashtra*⁵.
6. *Vijay Radhaji Bhandare vs. The State of Maharashtra*⁶.
7. *Sandeepkumar Pandharilal Yadav vs. State of Maharashtra*⁷.
8. *Kesar Singh and Another vs. State of Haryana*⁸.
9. *Irfan @ Naka vs. The State of Uttar Pradesh*⁹.
10. *Om Prakash Berlia and Another vs. Unit Trust of India and Others*¹⁰.

11. *Per Contra* the APP strongly relied on the dying declaration of the deceased, submitting that it was made immediately after the incident, which existed in oral form made to PW-1 and PW-3 and in a written form in the presence of PW-6. It was argued that the dying declaration clearly attributes the act to the Appellants. The Ld. APP submitted that a truthful dying declaration alone is sufficient to sustain conviction. The Ld. APP submitted that testimonies of PW-6 and PW-7 show that the deceased was in a fit condition to make the statement. She submitted that Exhibit 25, records that the patient was conscious

¹ (1976) 4 SCC 382.

² (2023) 17 SCC 95.

³ (2014) 12 SCC 133.

⁴ (2000) 10 SCC 324.

⁵ (2024) 2 SCR 989.

⁶ (Cri Appeal No. 1117 of 2015 of BHC.

⁷ (Cri Appeal No. 434 of 2021 of BHC.

⁸ (2008) 15 SCC 753.

⁹ (2023) 11 SCR 789.

¹⁰ (1982) SCC Online Bom 148.

and able to speak. The Ld. APP submitted that the prosecution has relied on the testimonies of PW-2 and PW-5 who have supported the prosecution case. The APP submitted that there was clear motive as Appellant No.1 suspected the chastity of the deceased. The Ld. APP submitted that the charge is under Section 302 read with Section 34 IPC and both the accused persons acted with common intention and their acts jointly contributed to the commission of the offence, thereby attracting Section 34 IPC. She further submitted that doctors often change hospitals and Dr. Balaji could not be traced for examination at the relevant time, however, PW-7 was part of the treatment team and assisted in the treatment of the deceased and therefore her testimony sufficiently proves the medical report. The APP argued that minor lapses such as missing signatures or minor procedural defects cannot demolish the prosecution case when the substantive evidence is otherwise reliable. The Ld. APP also submitted that the post-mortem report and inquest panchnama were admitted by the accused during the trial and therefore their contents cannot now be disputed. The Ld. APP therefore urged that trial court has rightly convicted the Appellants and therefore conviction deserves to be maintained.

12. The Ld. Counsel for the Appellants and the Ld. APP have submitted their respective written synopsis of arguments which are taken on record.

13. The entire case hinges on the dying declarations, oral and written. Oral Dying Declaration are made to PW 1, PW 3 and PW 5 whereas PW 7 has recorded the dying declaration in the presence of PW 6. Before ascertaining the veracity of the dying declarations it will be advantageous to refer to some of the landmark judgments of the Hon'ble Apex Court as well as other High Courts so that the case in hand can be appreciated.

14. In *Irfan @ Naka Vs. The State of Uttar Pradesh in Criminal Appeal Nos. 825-826 of 2022*, it has been held by the Hon'ble Apex Court as under:

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

... ..

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully

convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

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

15. The Apex Court in the case of ***Navin Bhimrao Bansode Vs. The State of Maharashtra Criminal Appeal No. 613 of 2014*** has been pleased to observe as under :

“19. So far as the dying declaration is concerned the law is well settled. The principle on which the dying declaration is admitted in evidence is based on the legal maxim “Nemo Moriturus Praesumitur Mentire” i.e. the man will not meet his maker with a lie in his mouth. It is based on the principle that in the face of death, all the worldly aspirations of a man do not exist. It is unlikely that a person who is on death bed would

falsely implicate an innocent. In the case of “Paniben Vs. State of Gujarat; AIR 1992 SUPREME COURT 1817”, the principles governing the dying declaration are enumerated as under:

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

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

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Ram Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).

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

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M. P., AIR 1982 SC 1021).

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

“21. The law on the dying declaration is that if the Court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that the dying declaration cannot be relied upon without corroboration. When the dying declaration is suspicious, it should not be relied upon without having corroborative evidence. Court has to scrutinise the

dying declaration carefully and must ensure that the dying declaration is not the result of tutoring, prompting or a product of imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself guarantee of its veracity. When the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction.

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

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

16. On the touchstone of the principles laid down and the observations made, let us analyze the evidence that has come on record with respect to the "Dying Declaration". PW 1, PW 3, PW 5, PW 6 and PW 7 are the relevant witnesses who would throw light on the aspect of dying declaration.

17. PW.1 Shevanti Chavra, who is the neighbour of the deceased, has deposed that the deceased Anita was residing with the Appellants since 3 to 4 months prior to the incident. She has deposed that there were frequent quarrels between the Appellant No. 1 Manoj and the

deceased. She has further deposed that on 26th April, 2017 at around 2.00 pm, deceased Anita went to fetch water at the water tap and she informed that the Appellant No. 1 was raising frequent disputes with her. She has further deposed that at around 3.45 pm her daughter Karina came calling her to come home with whom she came. She further deposed that she approached to the room of deceased Anita where she found her lying on the mat in burnt condition and while crying she was calling upon her to inform her mother. She has further deposed that when she asked the deceased Anita how she was burnt she replied that “ *Baburao poured kerosene on her person and fallen her on the ground by pushing her while Manoj set her on fire by lighting match-stick*”. She has further deposed that she along with her approached to police at Vasai for medical treatment and the police recorded her statement. She has further deposed that Anita died within 5 to 6 days of her hospitalization.

18. PW 3, mother of the deceased has deposed that on 26th, when she was informed that accused set the deceased Anita on fire, she immediately rushed to the room of Anita. She further deposed that deceased Anita was shifted to the hospital and hence she visited the hospital where she saw Anita in fully burnt condition. When she asked about the cause of her burning, deceased Anita replied that “*Baburao poured kerosene on her person and fell her on ground by kicking*

while accused-Manoj set her on fire with liting match-stick.” She has further deposed that Anita was repeatedly saying it. She also deposed that after 4-5 days, Anita died during her hospitalization. She has also categorically deposed that she was speaking clearly until her death.

19. PW 5, Laxmi Kalu Gudiya, the neighbor of the deceased, has deposed that Accused Baburao and Manoj were residing with Anita in the room and those three persons frequently quarreled with each other. She has deposed that on 26.6.2017, Manoj, Baburao and Anita were quarrelling around 3.00 to 4.00 p.m. She has deposed that after hearing that sound, she came out of the room and after noticing the quarrel she went for calling Karina from her house. She has further deposed that she brought Karina to the room of Anita and while returning she saw that Anita was burning in her room and the smoke was emitting. She has deposed that after noticing them Manoj and Baburao ran away and the crowd gathered there. She has further deposed that Anita told her that “*Baburao pushed her to lay on the ground and Manoj set her on fire by lit-matchstick.*” She has further deposed that she was smelling kerosene in that room.

20. PW 6 is the Special Executive Magistrate in whose presence the written dying declaration at Exhibit 25 came to be recorded. She has deposed that on 26/06/2017 she was called by the Vasai Police at D.

M. Petit Municipal Hospital. She has deposed that when she approached to that hospital in evening she found a burnt lady hospitalized there who had sustained burn injuries all over her body. She has deposed that upon inquiring, that lady told that she was set on fire by two persons after pouring kerosene on her person and that one of those two persons poured kerosene on her person while another set her on fire and that she was set on fire due to the dispute. She also deposed that the deceased had told that the said incident occurred at her house. She deposed that she did not remember the name of said burnt lady. She deposed that the police recorded the statement of that burnt lady in her presence which was having her signature marking her presence alongwith the thumb impression of that burnt lady beside it and that its contents were recorded as stated by that burnt lady. The statement is at Ext. No.25. PW 6 further deposed that she inquired about the ability of speaking of the burnt lady with the treating doctor and the doctor also made endorsement to the effect.

21. PW7 Dr. Heena Chavne, attached to D M Petit VVMC Hospital, has deposed that Dr. Balaji, Medical Officer of their hospital gave medical treatment to the patient-Anita. She has brought on record the true copies of OPD papers, police information letter and transfer letter which were issued by the medical officer of their hospital with his sign and seal which she identified it to be true and

correct at Ext.31 amid objection raised by the defence. PW 7 brought the police information letter on record which was marked as Exhibit 32, again amid objection raised by the defence counsel with respect to its admissibility. She has deposed that the police had recorded statement of the injured Anita on 26/6/2017 in her presence. She has deposed that police enquired about the fitness of the injured Anita for recording her statement and she told them that the injured was in a fit condition for giving the statement and police thereafter recorded the statement of the injured. She has further deposed that she signed at the margin of that statement as “patient was conscious and oriented”. She has further deposed that the endorsement bears the seal which is true and correct and the statement bears thumb impression of the injured and the contents are true and correct as stated by her.

22. These witnesses were cross examined at length, however the defence could not cause any dent to the depositions of these witnesses in any manner on this core issue of the dying declaration, barring few omissions on other aspects which were totally insignificant.

23. The Apex Court, in the case of *Irfan Alias Naka* (supra) has laid down certain factors which can be considered to determine when a dying declaration should be accepted. A conjoint reading of the depositions of PW 1, PW 3, Pw5 and PW6 would show that there is

absolute consistency in the deposition of these witnesses with respect to the oral dying declaration made by the deceased to these witnesses and which further gets corroborated by the dying declaration made in the presence of PW 6, the Special Executive Magistrate. The evidence on record, if perused minutely, ticks all the boxes with respect to the factors which have been enumerated by the Apex Court in the aforesaid judgment. For instance, in the judgment it is observed that dying declaration should be made in expectation of death and at the first available opportunity. In the present case also the dying declaration was made in expectation of death with 70% burn injuries and at the first available opportunity. This Court does not find from the evidence on record that the dying declaration was tutored or product of any prompting or leading at the instance of police or any interested party. The testimony of these two witnesses i.e PW 6 and PW 7, who have taken all precautions whilst recording the statement/dying declaration of the deceased, lends credence to the case of the prosecution that the deceased was in a fit state of mind at the time when she made the statement. PW-6 has ascertained and verified from the treating doctor about the ability of burnt lady to speak which the doctor has also confirmed and made an endorsement accordingly, after which the dying declaration came to be recorded. In the cross examination nothing could be brought on record to indicate that the deceased was not in a fit state of mind while making the declaration.

Further, the question of dying declarant having opportunity to clearly observe the incident does not arise as she is the victim herself and has suffered the injuries. The “dying declaration” has been consistent in the depositions of PW-1 (neighbour), PW-3 (mother of the deceased), PW-5 (neighbour). This Court also does not find that the dying declaration has a manifestation/fiction of the deceased’s imagination and appears to be voluntarily. Considering the nature of injuries and the percentage of burns suffered by the deceased, coupled with the fact that the doctor had given an endorsement that the patient was in a fit state to give her statement, there is no reason for this court to disbelieve the dying declaration of the deceased. We therefore come to a conclusion that a dying declaration inspires confidence and has been made voluntarily.

24. The learned counsel for Appellant No. 2 that argued that when the dying declaration was recorded, the patient was not in a fit state to give the statement as the condition of her health was not stable and she had poor prognosis as mentioned by the Medical Officer at Exhibit 32 and the report at Exhibit 32 debunks the case of the prosecution that the deceased was in a fit condition to give the statement. The learned counsel has referred to the Police Information report at Exhibit 32 and has submitted that the deceased was admitted in the hospital at 6:27 p.m. on 26 June 2017 and she was not in a

stable condition and the prognosis was poor. Assuming for the sake of argument, that at the time of admission at 6:27 pm on 26/06/2017, the patient (deceased) was unstable and had a poor prognosis, however the said report itself indicates that the patient was “conscious”. Further, when the statement was recorded, the doctor has made an endorsement that the patient was conscious and oriented and has also deposed that, when the police inquired about the fitness of the injured Anita for recording her statement, she informed them that the injured was in a fit condition to give the statement. Therefore, the argument of the Ld. Counsel for the Appellant No 2 that the report at Exhibit 32 debunks the case of the prosecution that deceased was in a fit condition to give the statement deserves to be rejected.

25. The other contention which has been raised by the learned counsel for Appellant No. 2 is that PW6, who was examined to prove the written dying declaration at Exhibit 25, did not mention that she was a Special Executive Magistrate authorized to take the dying declaration of the deceased and that her statement suggested that she is a business woman. This argument of the Ld. Counsel for Appellant No. 2 cannot be accepted as the dying declaration at Exhibit 25, bears the stamp of PW6 as Special Executive Magistrate, Palaghar. Moreover, the defence has not brought on record any material to suggest that PW6 was not authorized to act as a Special Executive

Magistrate. The argument of Ld. Counsel for Appellant No 2 therefore deserves to be rejected.

26. The Ld. Counsel for Appellant No 2 has also raised doubts about oral dying declaration made to PW1 by contending that the accused no 2 (Appellant No 2) poured the kerosene and pushed the deceased did not find place in the statement recorded u/s 164 Crpc. Even if it is so, there are other witnesses who have deposed as narrated by the deceased and the deceased has in her statement also mentioned about the same and therefore just because PW 1 omitted to narrate the same in her 164 statement does not go to the root of the matter or in any manner diminishes the evidentiary value of other witnesses.

27. It is also the contention by the Ld. Counsel for Appellant No 2 that the Appellant No 2 did not have any motive to pour kerosene and PW1 and PW3 have attributed motive to Appellant no 1. It hardly needs to be emphasized that motive may not be relevant at all times. The failure to prove motive is not fatal as a matter of law. However, the fact remains, that the witness has categorically deposed about Appellant no 2 pouring the kerosene and pushing her on the ground, which goes to show the common intention of Appellant No 2 acting in collusion with appellant no 1.

28. The Ld. Counsel for appellant no 2 has also disputed the presence of the accused at the spot by contending though PW1, PW2 and PW5 have stated that accused were residing with deceased and it is surprising that police did not come across any daily usable articles at the spot of the incidence which suggest that accused was residing with the deceased. This contention cannot be accepted as PW1, PW2 and PW5, have clearly deposed about the presence of the accused at the spot, to which there is no cross examination to that effect, which would negate the contention of the prosecution. Even the defence has not led any evidence to prove that they were not residing at the said spot.

29. The next contention raised by the Ld. Counsel for Appellant no 2 is that the theory of pouring of kerosene by Appellant no 2 has not been conclusively established. He has submitted that the CA report does not find kerosene on any other material collected from the spot of the incident, except the kerosene stove, which was having the kerosene and it is natural to have the kerosene in the stove. It will be pertinent to note that PW4, a panch witness, an independent witness, has clearly deposed that the apparels which were recovered at the instance of accused that is 1 shirt, T-shirts, Pair of jeans pants and ¾th pants were smelling of kerosene. Therefore, absence of traces/residues of kerosene on the clothes at the time of Chemical analysis, which has

been conducted almost after a year from the date of the incident, cannot create a doubt as there is possibility of the articles losing the kerosene residues due to efflux of time. A reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Puran Chand Vs State of Haryana***¹¹ wherein it has been observed as under:

“14. Lastly, a point was raised by the learned defence counsel that on the half burnt clothes of Santosh, there were no traces of kerosene and, therefore, the whole story of burning her by pouring kerosene on her body has to be disbelieved. It is to be seen that the seizure of these clothes was proved by Mam Chand (PW-8). He spoke about the seizure of an empty can, smelling of kerosene oil, a match box with 4 or 5 burn match sticks, a quilted bed (probably meaning ‘mattress’), smelling of kerosene from it which was semi burnt and some sample of soil. According to him, they were packed in the parcels separately and sealed. On this backdrop, when the recovery memo is seen, it mentions one empty tin box, match box, two burnt match sticks, earth which was put in plastic Dibbi, clothing of the deceased Santosh of light blue colour, bed sheet (Bichhona) with marks of fresh burns. The witness, however, has not referred in his Examination-in-Chief to the cloth parcel (Exhibit 4) with some partially burnt pieces of clothes. The FSL report suggests that kerosene residues were detected in Exhibit 5, which was a plastic bag containing a partially burnt coloured check cotton gadda, It clearly suggests that no kerosene 12 residues could be detected on Exhibits 1, 2, 3, 4 or 6. From this, the learned counsel urged that particularly, the parcel Nos. 1, 3 and 4 were bound to carry kerosene residues if the prosecution story was truthful. However, it is to be seen that the mattress did have kerosene residues. While this incident has taken place on 15.12.1997,

¹¹ 2010 (6) SCC 566.

parcels seems to have been sent only on 29.12.1997 i.e. after about 14 days of the incident, which reached the FSL Laboratory on 31.12.1997. The FSL report bears a date 5.6.1998. There is thus the possibility of the articles losing the kerosene residues due to the long interval of time, yet it has to be noted that the mattress which undoubtedly a thick material, did have the kerosene residues. Ordinarily, there was no reason for the mattress having the kerosene residues unless kerosene was poured on the same. It is again to be noted that even the plastic container, containing kerosene, was also found not having any kerosene traces. Therefore, this circumstance will not help the accused as some kerosene traces have been found on the mattress where Santosh was sleeping. Even if we ignore this circumstance, the fact of the matter is that the dying declaration has been found by us to be voluntarily truthful and unblemished. That would clinch the issue against the accused.”

30. Therefore, absence of traces of kerosene in the CA report does not render the dying declaration of the deceased as unbelievable.

31. The next contention raised by the Ld. Counsel for Appellant No 2, is that with more than 70% to 80% of burns the patient would not be in a condition to give dying declaration. The Hon’ble Supreme Court in “***Bhagwan Vs. State of Maharashtra through Secretary Home, Mumbai, Maharashtra***¹² has been pleased to observe as under:

18. Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration? This question is also no longer res integra. In Vijay Pal v. State (Government of NCT

¹² Cri. Appeal No. 385/2010

of Delhi) 2015 (4) SCC 749, we notice the following discussion:

“23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat; (1992) 4 SCC 69: 1992 SCC (cri) 810 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh; (2013) 14 SCC 159: (2014) 4 SCC (Cri) 141, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

19. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable.

32. Therefore, just because the deceased had 70 to 80% burn injuries, it did not render the injured incapacitated from giving the dying declaration especially when even the doctor had given an endorsement that the patient was conscious and oriented. The contention of the appellant, therefore deserves to be rejected. In fact in the judgment of Hon’ble Apex court in the case of **“Neeraj Kumar alias Neeraj Yadav Vs. State of Uttar Pradesh¹³**, by referring to the judgment of **Dharmendra Kumar Vs. State of**

¹³ Cri. Appeal arising out of SLP(Crl.) No. 7518 of 2025.

Madhya Pradesh¹⁴ has observed that lack of doctor certification as to fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable.

33. The next plank of argument which the Ld. Counsel for the Appellants have vehemently and emphatically argued is that the crucial circumstances appearing in evidences were not put to the Appellants while recording statement under section 313 of Cr.PC and therefore a serious prejudice has been caused and therefore the conviction gets vitiated. It is the contention of the Ld. Counsel for the Appellants that the evidence about cause of death certificate and post-mortem notes have not been put to the appellants in 313 statement and therefore, no part of the aforesaid exhibit could be relied upon by the prosecution to sustain the conviction. The Ld. Counsel for the Appellant No1 relied upon the judgment of *Rajkumar alias Suman vs State (NCT of Delhi)*¹⁵ and *Prakash Vs. State of Karnataka*¹⁶.

34. In the judgment of *Rajkumar alias Suman* (supra) the Apex Court has observed that it is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The Court has

¹⁴ (2024) 8 SCC 60.

¹⁵ (2023 SCC OnLine 574.

¹⁶ (2014) 12 SCC 133.

further observed that by material circumstance means the circumstance or the material on the basis of which the prosecution is seeking conviction. The Court has further observed that the object of examination of the accused under section 313, is to enable the accused to explain any circumstance appearing against him in the evidence and the Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of particular accused. The Apex Court has further observed that the failure to put material circumstances to the accused amounts to a serious irregularity and it will vitiate the trial if it is shown to have prejudiced the accused. The Apex Court has further observed that if any irregularity in putting the material circumstance to the accused does not result in failure of justice and it is a curable defect, then while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of incident. The Apex Court has also observed that while deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered. The other judgment of *Prakash vs State of Karnataka* (supra) referred to by the Ld. Counsel for the Appellant No 1, concerns a case wherein the report of a serologist was not put to the accused, when he was examined under section 313 of the

Cr.P.C. and the High Court had put the report at the appellate stage and called upon the counsel to explain, which was considered as an opportunity given to the Appellant in terms of section 313 of Cr.P.C. The Hon'ble Apex Court did not find favour with the same.

35. There can be no dispute about the proposition of law laid down in the aforesaid two judgments, however, the same can be distinguished on the facts of each case. In the case of *Rajkumar vs State (NCT of Delhi)* (supra), the Apex Court has observed that failure to put material circumstances to the accused amounts to serious illegality and it will vitiate the trial if it is shown to have caused prejudice to the accused and if the irregularity in putting the material circumstances to the accused does not result in failure of justice, it becomes curable. Let us now analyse what circumstances have been put to the accused under section 313 of the Cr.P.C. and whether it has occasioned any prejudice which has been brought to the notice.

36. The statements of both the Appellants recorded under section 313 of Cr.P.C. are from page nos 36 to 57 of the paper book and the following questions would be relevant to determine

whether the material circumstances have been put to the accused and have been brought to their knowledge.

Q5. What you want to state about her further evidence that she asked Anita how she was burnt, Anita replied her that you-Baburao poured kerosene on her person and fallen on her ground by pushing and you-Manoj set her on fire with lighting match stick?

Ans. It is false.

Q.12 What you want to state about her further evidence that on 26th she was informed that you set Anita on fire hence immediately she rushed to the room of Anita, Anita was shifted to hospital, so she visited the hospital where she found Anita in fully burnt condition, she asked Anita the cause of her burning, she replied that you-Baburao poured kerosene on her person and fell her on the ground by kicking and you-Manoj set her on fire with lighting match-stick, Anita met to death after 5 day, police recorded her statement, she has identified you in the Court?

Ans. It is false.

Q13. What you want to state about evidence of Mangesh (P.W.4) at Ext. 15 that he being the panch witness, the spot panchanama at Ext.16 was prepared in his presence by conducting the seizure of match sticks, match box, kerosene stove, pieces of blue and ash coloured clothes etc. and he identified those articles at F1 to F12?

Ans. It is false.

Q16. What you want to state about her further evidence that on 26/06/2017 you both and the victim were quarreling at around 3.00 to 4.00 pm hence she went at the spot, by noticing your grave quarrel she went for calling Karina but on the way to return she found the victim was burning in her room due to which smoke was emitting while you both ran away?

Ans. It is false.

Q17. What you want to state about her further evidence that the victim told her that you accused – Baburao pushed her to fell on the ground while you-accused-Manoj set her on fire with lighting match stick, she smelled kerosene every where in her room and she by identifying you both also affirmed the photographs F1 to F12 were

*snapped from the spot of incident?
Ans. It is false.*

*Q18. What you want to state about evidence of Vidya (PW-6) at Ext. 24 that she was called by Vasai Police at D. M. Petit Municipal Hospital on 26/06/2017 where she found the victim in burnt condition admitted in burns ward, after asking the causes the victim stated police that in the dispute with two persons, one poured kerosene on her person while another set her on fire and accordingly her statement was recorded by police in presence of this witness which is at Ext. 25 whereupon she made signature?
Ans. It is false.*

*Q19. What you want to state about evidence of Dr. Heena (PW7) at Ext. 29 that she being the medical officer, examined the victim Anita who was referred by the police as per Ext. 30, another medical officer Balaji gave the victim the medical treatment and the medical record at page nos. 147 to 149 accordingly is collectively at Ext. 31?
Ans. It is false.*

*Q20. What you want to state about her further evidence that the letter at Ext. 32 was received from the police, the statement of victim recorded by the police in her presence upon her endorsement of fitness of the victim, she identified that endorsement and as per her version the victim sustained 70% burn injuries as per the entries made by her in the MLC register with her signature?
Ans. I don't know.*

*Q21. What you want to state about evidence of Sanjay (PW-8) at Ext. 36 that being the I.O. he started investigation into the crime prepared the panchanama at Ext. 39, he collected the proof of your residence, recorded statement of the witnesses, obtained the relevant record including medical examination certificates by issuing requisitions and letters and also arranged for recording the statements of the witnesses u/s. 164(5) of Cr.P.C. 1973?
Ans. It is false.*

37. The above questions in the examination under section 313 of Cr.P.C. would show that the appellants were fully aware of the

prosecution evidence relating to their act of pouring kerosene by appellant No. 2 and of setting her on fire by lighting match-stick by Appellant No. 1. In these circumstances by not putting to the appellant expressly the cause of death certificate and postmortem examination notes, no prejudice can be said to have been caused to the Appellants. If the statement under Section 313 is perused, it can be gauged that the appellants were informed about the evidence relating to the incident dated 26th June 2017. The Appellants were informed that it had come in the evidence of PW-1 that she asked Anita how she was burnt and Anita replied to her that Baburao poured kerosene on her person and fallen her on ground by pushing and Manoj set her on fire by lighting match-stick to which the appellants have replied that it is "false". Further it was brought to the notice of the Appellants that it has come in the evidence of PW-2 that one tenant Laxmi came and told her that dispute was going on in the room of Anita and she rushed to the room of Anita and saw that the Appellants were running with a bag in the direction of Vasai-fata and she also saw that Anita was coming out of the room in burnt condition and she was showing to call her mother to which the Appellants have replied as "false". The attention of the Appellants was also drawn to the evidence of PW-3, wherein it has come in the evidence that on 26th she was informed that you set Anita on fire, hence immediately she rushed to the room of Anita and Anita was shifted to the hospital. When she visited hospital,

she found Anita in fully burnt condition. When she asked Anita the cause of her burning, she replied that Baburao poured kerosene on her person and fell her on the ground by kicking and Manoj set her on fire by lighting match-stick. It was also brought to the notice that Anita died after 5 days and police recorded her statement, to which the Appellants have replied it to be “false”. The evidence of PW-4, i.e. the Panch Witness that the spot panchnama was prepared in his presence by conducting the seizure of match-stick, match-box, kerosene, pieces of blue and ash coloured clothes, etc. and he identified those articles to which the reply of the appellants was “It is false.” Further, it was also brought to the notice that PW-5 has given evidence that victim told her that Baburao pushed her to fell on the ground and accused Manoj set her on fire with lighting match-stick, she smelt kerosene everywhere in the room and she by identifying you both also affirmed from the photographs F1 to F12 were snaps from the spot of the incident to which the appellants have replied as “It is false”. The evidence of PW-6, the doctor attached to DM Petit Municipal Hospital, that on 26th June 2016, where she was found in burnt condition admitted in burns ward and after asking the cause, the victim stated to the police that in dispute with two persons one poured kerosene on her person, and while the other set her on fire and accordingly, her statement was recorded in presence of this witness to which the Appellants have replied as “It is false”. It was also brought

to the notice of the Appellants, the evidence of PW-7 that statement of the victim was recorded by police in her presence upon her endorsement of fitness of victim and she identified that endorsement and as per her version, the victim sustained 70% burn injuries as per the entries made by her in MLC register with a signature to which the appellants have replied as “I don’t know”. Lastly, the evidence of PW-8, the Investigating officer was also brought to the notice of the appellants and they were apprised that the I.O. has started investigation into the crime and had prepared panchnama by conducting seizure and inspection of the spot, collected proof of their residence, recorded statements of witnesses obtained relevant record including medical examination certificates by issuing requisitions and letters and also arranged for recording statements of witnesses under 164 (5) of Cr.P.C. to which the appellants have replied as “It is false”. The Appellants were also afforded an opportunity as to whether they wanted to examine themselves on oath or any other witness and whether they want to state anything in respect of the present case to which they have replied as “ No”.

38. Having regard to the above, it cannot be said that the appellants were not made fully aware of the prosecution evidence that the appellant No. 2 had poured kerosene by pushing her on the ground and Appellant No. 1 had lit the match-stick. The appellants had full

opportunity to say what they wanted to say with regard to the prosecution evidence, which they have failed to. From the above, it can be seen that the appellants were apprised of the evidence which has appeared against them and have been given an opportunity to give an explanation. The basic purport of Section 313 is to make aware about the evidence which has come on record during the trial. The Appellants have failed to demonstrate as to what prejudice has been caused to them by not putting the Post mortem notes and report of Chemical Analysis, which were admitted by the defence under section 294 Cr.PC.

39. A useful reference can be made to the following judgments. In the latest judgment of the Hon'ble Apex Court in the case of ***Nar Singh Vs. State of Haryana Criminal Appeal No. 2388 OF 2014*** it has been observed as under.

“18. Observing that omission to put any material circumstance to the accused does not ipso facto vitiate the trial and that the accused must show prejudice and that miscarriage of justice had been sustained by him, this Court in Santosh Kumar Singh v State through CBI, (2010) 9 SCC 747 (Para 92), has held as under:

“... the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him...”

“19. In Paramjeet Singh alias Pamma v State of

Uttarakhand (supra), this Court has held as under:-

“Thus, it is evident from the above that the provisions of Section 313 Cr.P.C. make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead, he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of any inadvertent omission on the part of the court to question the accused on an incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.”

“20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section 313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 Cr.P.C., it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.”

“22. We may also refer to other set of decisions where in the facts and circumstances of the case, this Court held that no prejudice or miscarriage of justice has been occasioned to the accused. In Santosh Kumar Singh v State thr. CBI (supra), it was held that on the core issues pertaining to the helmet and the ligature marks on the neck which were put to the doctor, the defence counsel had raised comprehensive arguments before

the trial court and also before the High Court and the defence was, therefore, alive to the circumstances against the appellant and that no prejudice or miscarriage of justice had been occasioned. In Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648, in the facts and circumstances, it was held that by not putting to the appellant expressly the chemical analyser's report and the evidence of the doctor, no prejudice can be said to have been caused to the appellant and he had full opportunity to say what he wanted to say with regard to the prosecution evidence and that the High Court rightly rejected the contention of the appellant-accused in that regard."

40. ***In Sunil vs State of NCT of Delhi [Criminal Appeal No. 688 of 2011]*** it has been held as under:

"42. In Shobhit Chamar & Another v. State of Bihar (1998) 3 SCC455, this Court, after examining a series of decisions, held that a challenge to the conviction based on non-compliance of Section 313 CrPC first time in the appeal before the Supreme Court cannot be entertained unless the appellants demonstrate that prejudice has been caused to them. The relevant observations, as contained in paragraph 24, are extracted below:

"24. We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 CrPC first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eyewitnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the (1998) 3 SCC 455 appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants."

“43. Building on the observations of this Court in Shobhit Chamar, which have been extracted above, in SatyaviSingh Rathi, ACP & Others, it was observed:

“77. ... These observations proceed on the principle that if an objection as to the Section 313 statement is taken at the earliest stage, the court can make good the defect and record an additional statement as that would be in the interest of all but if the matter is allowed to linger on and the objections are taken belatedly it would be a difficult situation for the prosecution as well as the accused.

78. In the case before us, as already indicated, the objection as to the defective 313 statements had not been raised in the trial court. We must assume therefore that no prejudice had been felt by the appellants even assuming that some incriminating circumstances in the prosecution story had been left out. We also accept that most of the fifteen questions that have been put before us by Mr. Sharan, are inferences drawn by the trial court on the evidence. The challenge on this aspect made by the learned counsel for the appellants, is also repelled.”

“44. From the decisions noticed above, the legal position that emerges, inter-alia, is that to enable an accused to explain the circumstances appearing in the evidence against him, all the incriminating circumstances appearing against him in the evidence must be put to him. But where there has been a failure in putting those circumstances to the accused, the same would not ipso facto vitiate the trial unless it is shown that its non-compliance has prejudiced the accused. Where there is a delay in raising the plea, or the plea is raised for the first time in this Court, it could be assumed that no prejudice had been felt by the accused.”

41. The learned counsel for the Appellants have not been able to explain or demonstrate as to what prejudice has been caused by omission to put the cause of death certificate and post-mortem examination notes to the appellants, when otherwise, the appellants

have been made aware about the evidence appearing against them. We are of the opinion that no prejudice was caused and there is no failure of justice that has occasioned. The Ld. Counsels appearing for the Appellants were also not in a position to point out any prejudice that was caused due to omission to put these circumstances. We find that the contention of the Ld. Counsel for the appellant deserves to be rejected.

42. In *Rajkumar alias Suman vs State (NCT of Delhi)*, a very pertinent observation has been made by the Apex Court with respect to the grievance that is always raised at the appellate stage due to defective recording of the statement under section 313 Cr.PC.

“28. Before we part with this judgment, we must take a note of sub-section (5) added to Section 313 of CrPC w.e.f. 31st December 2009. Sub-section (5) reads thus :

“313. Power to examine the accused.- (1) .. (2)... (3)... (4)

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

“29. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the Court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the Trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always

provide copies of the said questions to the learned Public Prosecutor as well as the learned defence Counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the Court and not as mouthpieces of their respective clients. While recording the statement under Section 313 of CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of sub-section (5) of Section 313 of CrPC, which will ensure that the chances of committing errors and omissions are minimized.”

43. We are of the opinion that to avert such eventualities and contingencies, the trial court needs to scrupulously adhere to the salutary provision of sub-section (5) added to Section 313 of CrPC which has come into effect on 31st December 2009. As rightly observed by the Apex Court that when the Trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence Counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. This will ensure that there is no prejudice caused and if caused can be rectified at the early stages.

44. It was emphatically argued by the Ld. Counsel for the Appellant

No 1 that the offence in the present case would fall under 308 of the IPC and not under section 302 of IPC and that the conviction needs to be altered to a lesser sentence under 308 IPC. We find the argument to be unsustainable for the reason that the very act of the Appellants defines their intention. Let us therefore analyse the section.

45. Section 308 - Attempt to commit Culpable Homicide:

“Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

46. The essential ingredients of Section 308 IPC are:

- a) The accused does an act;
- b) With the intention or knowledge that if death were caused by that act, he would be guilty of culpable homicide not amounting to murder;
- c) The act does not result in death; it results only in hurt.

47. The operative and decisive language of Section 308 is the conditional phrase i.e. '*if he by that act caused death.*' This phrase is

framed in the conditional future tense. It presupposes that death has not occurred. Therefore, Section 308 is an attempt provision and it operates upon the hypothesis that the offence was attempted but not completed. Once death results, the offence is complete and ceases to be an attempt anymore. Section 308 IPC, by its very language and nomenclature is an *attempt provision*. Its operative language - "*if he by that act caused death, he would be guilty of culpable homicide not amounting to murder*" is couched in the conditional hypothetical. The provision presupposes that death has not occurred. In the present case, the deceased succumbed to 95% burn injuries (Post-Mortem Report) seven days after the incident. The fact of death is not in dispute. Once death results, the offence applicable to the completed act alone is attracted and Section 308 ceases to exist as a charge by operation of its own language and classification. As held by the Hon'ble Supreme Court in Sunil Kumar v. State of NCT of Delhi¹⁷. It is held in paragraph 4 that "*It is the attempt to commit culpable homicide which is punishable under Section 308 IPC.....*" An attempt, by definition, is an inchoate act, therefore the appellants cannot ride on two horses by admitting the fact of death and also seeking refuge under a provision whose entire existence is conditioned upon its non-occurrence. Section 308 IPC is accordingly inapplicable at the threshold.

¹⁷ (1998) 8 SCC 557.

48. Even in the absence of death, Section 308 wouldn't have been the appropriate charge. Section 308 is the *attempt to commit Culpable Homicide not amounting to murder*. Section 307 is the *attempt to commit murder*. The two provisions are not interchangeable as each tracks the underlying completed offence. In the present case, the completed criminal act falls squarely under 4thly of Section 300 IPC and not under any exception to Section 300. As authoritatively held by the Hon'ble Supreme Court in paragraph 12 of the case **Santosh v. State of Maharashtra**¹⁸ held that, any person of ordinary intelligence would know that pouring kerosene upon a human body and setting it ablaze is so imminently dangerous that it must in all probability cause death, attracting 4thly of Section 300 IPC without qualification. Where the completed offence is murder under 4thly of Section 300 IPC, the appropriate attempt charge, had death not occurred would have been Section 307 IPC, not Section 308. The reliance of the Ld. Counsel for Appellant No 1 upon Section 308 is therefore misconceived.

49. The Appellants have raised two specific factual contentions in support of the argument referring to Section 308 IPC, namely negative chemical analysis findings and absence of evidence as to the quantum of kerosene used. On the submission of negative chemical analysis

¹⁸ (2015) 7 SCC 641.

arguments, we find that kerosene is a volatile substance that evaporates rapidly upon combustion. The burning itself destroys the physical traces of the accelerant. The absence of kerosene residue in a chemical analysis conducted after the burning is entirely consistent with kerosene having been poured and ignited, and cannot rationally be treated as proof that no kerosene was used. Further efflux of time is also a relevant factor. The incident occurred on 26/6/2017 and the CA report is dated 9/4/2018. Therefore possibility cannot be ruled out that when the analysis was conducted after almost 10 months, the traces of kerosene residues would have evaporated. In the case of Puran Chand v/s State of Haryana, 2010 (Criminal Appeal 1818 of 2009 at SC; Para 14), the Hon'ble Supreme Court held *that "There is thus the possibility of the articles losing the kerosene residues due to the long interval of time."*

50. Further, in the present case, all prosecution witnesses have consistently deposed about pouring of the kerosene upon the deceased, and the dying declarations recorded are found to be voluntary and consistent and the same specifically attribute the act of pouring kerosene to Appellant No. 2 and the act of igniting the matchstick to Appellant No. 1.

51. In **Naeem v/s State of UP, 2024 (Criminal Appeal No. 1978 of 2022)** it has been held that, “*where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated.*” Hence, in the facts of the case, a negative chemical analysis report cannot prevail over such direct and credible oral evidence.

52. Secondly on the absence of evidence about quantum of kerosene, 4thly to Section 300 IPC places no requirement upon the prosecution to establish the precise quantity of accelerant which is required to be used to come within the ambit of this section. The provision contemplates only whether the act was so imminently dangerous that death was its probable consequence in all probability. Setting ablaze a human body is an act that unequivocally satisfies that standard regardless of whether 100 ml or 500 ml of kerosene was used. Precision as to quantum is legally irrelevant where the act and its fatal consequences are both proved on evidence.

53. A profitable reference can be made to the latest judgment of the Hon’ble Apex Court in the case of ***Navin Bhimrao Bansode Vs. The State of Maharashtra(supra)*** has held as under

“48. Pouring of kerosene and setting a person on fire is an imminently dangerous act. A person who pours kerosene on someone and sets him on fire has no right to say that he had no knowledge that this act of his would cause death or would cause such bodily injury as is likely to cause death. The act is so inherently dangerous that a man of ordinary intelligence can also contemplate that setting a person on fire would entail death or would cause such bodily injury as is likely to cause death. The act is so imminently dangerous that it puts the accused on the knowledge that it would cause death or bodily injury as is likely to cause death. Section 300 4thly of the I.P.C. reads as under :-

“If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury”.

*In the case at hand the accused poured kerosene on the deceased and then set afire by igniting a match stick. These two acts are so inherently dangerous that a person who does these acts knows that in all probability it would cause death. The accused first poured kerosene on her and then set her on fire. Therefore, this act denotes that he had the intention to set the deceased on fire. The dying declaration Exh. 35 shows that the accused had quarrel with deceased at 8.00 p.m. All of them went to sleep and in the night at 12.00 a.m. he poured kerosene on the person of the deceased and then set her ablaze. These acts clearly indicate that the accused had the intention to commit her murder. Thus, the prosecution has proved that the death is homicidal. It has been held in the case of **Suraj Jagannath Jadhav vs The State Of Maharashtra in Criminal Appeal No. 1885 of 2019 (Supreme Court) decided on 13 December, 2019** by the Hon'ble Supreme Court as under :-*

“Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death”.

54. We therefore hold that Section 308 IPC is inapplicable in the instant case. Firstly, because death has occurred and the provision is exhausted; secondly, because even in the absence of death, the applicable attempt provision would have been Section 307 and not Section 308; and thirdly, because the specific factual arguments advanced in support of the Section 308 are each independently untenable on the evidence and the law. The provision which exclusively attracted on the facts of the present case is 4thly of Section 300 IPC read with Section 34 IPC.

55. The Ld. Counsel has strongly urged that the Inquest Panchanama does not mention about the apparent cause of death and urged that the same is fatal to the prosecution. Therefore, the issue for consideration is whether by not mentioning the apparent cause of death, the entire trial is vitiated and it is so fatal to the prosecution that it should inure to the benefit of the accused.

56. No doubt, section 174(1) CrPC mandates that the police officer shall make an investigation and draw up a report of the apparent cause of death, describing wounds, fractures, bruises, and marks of injury found on the body, and stating by what weapon or instrument such marks appear to have been inflicted and it has to be piously followed. Even the latest judgment of the Hon'ble Supreme Court in **Bhagat**

Singh v. State of Uttar Pradesh, 2026 INSC 527 (Para 13) also lays down that recording the nature of death, whether homicidal, suicidal, accidental or by machinery is the core and primary purpose of the inquest Panchanama. Therefore, an Inquest Panchanama that does not indicate the nature of death can be said to be a failure on the part of the police machinery. However, the failure to record the nature of death does not vitiate the trial. The Supreme Court in *Madhu @ Madhuranatha & Anr. v. State of Karnataka, (2014) 12 SCC 419* (Para 13) held: *"The object of the inquest proceeding is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. More so, the inquest report is not a piece of substantive evidence and can be utilised only for contradicting the witnesses to the inquest examined during the trial. Neither the inquest report nor the post-mortem report can be termed as basic or substantive evidence and thus, any discrepancy occurring therein cannot be termed as fatal or suspicious circumstance which would warrant benefit of doubt to the accused."* Accordingly, while the omission goes to the quality and completeness of the inquest, it does not render the trial invalid. The reason why non-mentioning of nature of death in the inquest Panchanama does not affect the trial is that the nature of death is independently and more authoritatively established by the post-mortem report. The inquest is a preliminary police document prepared at the spot without scientific

examination, whereas the post-mortem is a medico-legal examination conducted by a qualified doctor. In *Javed Abdul Rajjaq Shaikh vs. State of Maharashtra (2019)*, the Supreme Court held that ordinarily in case of inconsistency between the inquest report and the post-mortem report, the post-mortem report shall prevail, as the doctor examines the body from a medico-legal perspective with scientific precision. Even where the omission in the inquest Panchanama amounts to a defect in investigation, the law is settled that such defect cannot be used to defeat the prosecution case. The Supreme Court in *Karnel Singh v. State of M.P., (1995) 5 SCC 518* held that in cases of defective investigation, the Court has to be circumspect in evaluating evidence, but it would not be right in acquitting an accused solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. This was reiterated in *Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517*, where the Court observed that the prosecution case will have to be examined de hors such omissions and contaminated conduct of officials, otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant which would shake public confidence not merely in the law-enforcing agency but also in the administration of justice. Hence, recording the nature of death is the primary purpose of the inquest under Section 174(1) CrPC, but its non-mention does not

vitiates the trial as the inquest report is not substantive evidence. If the post-mortem report independently and authoritatively establishes the nature of death, investigative lapses cannot be permitted to defeat an otherwise established prosecution case.

ANALYSIS OF THE JUDGMENTS RELIED UPON BY THE APPELLANTS:

57. The Ld. Counsel has invited the attention of this Court to the judgment of *State of Andhra Pradesh v/s Rayavarapu Punneyya & Anr.* (1976) 4 SCC 382 and has relied upon para 21 which is as under:

“ 21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this

question is found in the positive, but the case comes, within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder, punishable under the first part of Section 304, Penal Code.'

58. The said judgment can be distinguished on the facts of the case - In the instant case, applying the three-stage test laid down, it can be concluded that all three stages are answered in the affirmative. At Stage 1, the PW-7 (Medical Officer) has deposed that the deceased sustained 70% burn injuries and that burn injuries exceeding 60% are fatal in nature. The deceased was admitted to hospital on the date of the incident and succumbed to those burn injuries seven days thereafter. The oral testimony of the Medical Officer, being substantive evidence, is consistent with and corroborated by the dying declaration of the deceased and the testimony of all prosecution witnesses, who have without exception deposed that kerosene was poured upon the deceased and she was set ablaze. The very nature of the act i.e. pouring a flammable accelerant upon a human body and igniting it, is such that death is its imminently probable consequence. The causal nexus between the act of the appellants and the death of the deceased is established beyond reasonable doubt. At Stage 2, the act of pouring a flammable accelerant directly upon the person of the deceased and igniting it, is an act done with full knowledge that it is likely to cause death, and Section 300 IPC is accordingly attracted. At

Stage 3, the act is so imminently dangerous that death is its probable consequence, attracting Clause (4) of Section 300 IPC directly; no exception being attracted, inasmuch as there was no provocation, no mutual fight, no sudden quarrel, and both appellants fled the scene immediately without any attempt to douse the fire or save the deceased, conduct consistent only with a deliberate intention to cause death.

59. By referring to the judgment of ***Raj Kumar Alias Suman v/s State (NCT of Delhi) (2023) 17 SCC 95***, the *Ld. Counsel* has invited the attention of this Court to para 22.

60. The sum and substance of Paragraph 22 is that it is the duty of the trial court to put each material circumstance appearing in evidence against the accused specifically and separately; the object being to enable the accused to explain such circumstances; failure to do so amounts to a serious irregularity; however, such irregularity vitiates the trial only if prejudice to the accused is shown; where no prejudice results, it is a curable defect; and the question of prejudice is determined by considering several factors, delay in raising the contention being one among them.

61. The Appellants have contended that the Death Certificate and

Post-mortem Certificate not having been put to them under Section 313 CrPC severs the causal nexus and vitiates the trial. As held in ***Nar Singh v. State of Haryana supra*** Para 20, the burden of demonstrating actual prejudice amounting to failure of justice lies squarely upon the accused. In the instant case, the appellants have not demonstrated any prejudice that has been caused and have simply mentioned that prejudice has been caused. Therefore, the burden remains undischarged. Crucially, a perusal of the Section 313 statement recorded in the present case reveals that specific questions were put to the appellants pertaining to the death of the deceased and her sustaining burn injuries at their hands. The appellants were therefore fully conscious of the causal nexus being alleged against them and were afforded full opportunity to explain the same. The Medical Officer having additionally been cross-examined by the defence or for that matter all the witnesses were cross-examined at length, no circumstance was concealed from or unknown to the appellants at any stage of the trial. The omission to put the post-mortem certificate, CA report specifically (admitted by the defence under 294 Cr.PC) is accordingly a curable irregularity as per Para 22.5 of ***Raj Kumar Alias Suman v/s State (NCT of Delhi)***. Further, it is important to note that the Court in the case of *Raj Kumar Alias Suman v/s State (NCT of Delhi)* set aside the conviction exclusively because, the entire case against the appellant rested on one solitary circumstance and that

solitary circumstance was never put to the accused at all and therefore the court came to the conclusion that prejudice was caused. In the present case, the prosecution case rests upon a confluence of independent and mutually corroborating evidence and the postmortem certificate, CA report is not the foundation of the conviction but one corroborative document amongst others. The factual predicate upon which the judgment of *Raj Kumar* supra proceeded i.e. a conviction based on a single unexplained circumstance, is entirely absent. Hence the reliance placed by the Ld. Counsel for the Appellant No 1 is misplaced.

62. By referring to the judgment of *Prakash v/s State of Karnataka (2014) 12 SCC 133*, the Ld. Counsel for the Appellant No 1 sought to rely upon paragraph 42 to 45 of the said judgment.

63. The gist of Paragraphs 42 - 45 is that, it is laid down that where evidence is intended to be used against the accused and the conviction is based upon it, the accused must be given an opportunity to explain that specific piece of evidence under Section 313 CrPC. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The appellate court putting the document to counsel for the accused in appeal is no substitute for the accused being examined on it at trial.

64. The aforesaid judgment is distinguishable on three grounds. First, in the aforesaid case the serologist's report was the sole piece of evidence on a specific material fact and no independent evidence existed on that point. In the present case, the conviction rests upon a confluence of independent and mutually corroborating evidence, namely the dying declaration of the deceased, the oral testimony of the Medical Officer, and the consistent depositions of all prosecution witnesses. The post-mortem certificate, CA report are corroborative documents amongst several and are not the foundation of the conviction. Second, the dying declaration of the deceased, consistently attributing the act of burning to both appellants and remaining unimpeached throughout cross-examination is by itself sufficient to sustain the conviction without any corroboration. Third, a perusal of the Section 313 statement reveals that specific questions were put to the appellants pertaining to the death of the deceased and her sustaining burn injuries at their hands, hence the appellants were fully confronted with the causal nexus and afforded complete opportunity to explain it.

65. The judgments in the cases of Kalu Ram v/s State of Rajasthan, (2000) 10 SCC 324; Vijay Bhandare v/s State of Maharashtra, BHC Criminal Appeal No. 1117 of 2015 and Dattatray v/s State of Maharashtra, 2024 INSC 167 though arising from different factual

matrices, share one common and indispensable thread; the presence of intoxication as the primary mitigating circumstance that persuaded the respective Courts to either reduce the conviction from Section 302 to Section 304 IPC or to reconsider the finding of murder. In *Dattatray v State of Maharashtra*, the appellant had come home under the influence of liquor and the burn injuries were caused through the accidental bursting of a stove. In *Kalu Ram Para 7*, the appellant was in a highly inebriated state when he poured kerosene and lit the matchstick, thereafter frantically pouring water to save the deceased. In the case of *Vijay Bhandare Para 12*, both dying declarations confirmed the accused was in a drunken state and kicked the stove during a quarrel. In each case, intoxication was not a peripheral fact, rather it was the cornerstone of the mitigating finding.

66. The aforesaid three judgments are distinguishable from the facts of the present case on the following grounds, individually and collectively. Firstly, Intoxication is entirely absent. The most prominent and decisive distinguishing feature is that in the present case, there is not a single piece of evidence on record that either the appellants were under the influence of alcohol or any intoxicant at the time of the incident. Both appellants in the present case acted in full sobriety and complete possession of their faculties knowing fully well the consequences of their act. The mitigating foundation upon which

all three judgments rest is therefore entirely absent.

67. In the judgment of **Sandeepkumar Pandharilal Yadav v/s State of Maharashtra (Crl. Appeal No. 434 of 2021**, the Ld. Counsel for the Appellant No 2 invited the attention of this court to the following paras :

“11) If we carefully read the oral dying declaration given by Suman to PW No.6, who was her cousin sister, it clearly indicates that, initially the Appellant and the deceased had a quarrel over the photographs of Smt. Sushma Saroj. When the deceased informed the Appellant that, she did not have those photographs, he got annoyed and set the bag containing clothes on fire. The deceased extinguished the fire by pouring water on it. Thereafter again a quarrel took place between them and when the deceased told the Appellant to go with Smt. Sushma Saroj, he got annoyed and enraged. It appears that, he not only got annoyed but infuriated and lost his self control due to the said provocation given by the said deceased.

“12) As noted earlier, the deceased alleged him of having an affair with Sushma Saroj and therefore the Appellant got enraged and in the said heat of passion, he poured the diesel on the deceased and set her on fire by igniting a match stick. The can of diesel was available at the scene of offence itself and the Appellant did not bring it from outside. The events took place in a quick succession and the Appellant did not get an opportunity to rethink over his act or to cool down from committing the successive acts.

“13) The Hon’ble Supreme Court in its various decisions had occasion to consider the distinction between the implication of Exception 1 and Exception 4 of Section 300 of the IPC.

“13.1) For bringing in operation of Exception 4 to Section 300 of IPC, it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

13.2) *The Fourth Exception to Section 300 of IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution (sic provocation) not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle i.e. for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in the case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code. It takes two to make a fight. Heat of passion requires that, there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved*

facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

68. The judgment of ***Sandeepkumar Pandharilal Yadav v. State of Maharashtra*** is distinguishable on facts. In the case referred hereinabove, the Hon'ble Court's finding rested upon the deceased having herself provoked the Appellant by naming Smt. Sushma Saroj and directing him to go with her, constituting bilateral provocation, and the events having occurred in quick succession leaving no opportunity for the appellant to reconsider his act. Neither circumstance is present on the record of the instant case. The deceased herein had returned home after looking for work and was subjected to the act of the appellants without any provocation, instigation or mutual exchange on her part. The act was entirely unilateral, carried out by the two appellants in concert. As the Court itself observed in Para 13.2, Exception 4 requires bilateral provocation and a mutual fight — a requirement that is not satisfied where the act is traceable solely to the conduct of the accused. Further, as Para 13.1 makes it clear, Exception 4 is unavailable where the offender has taken undue advantage or acted in a cruel or unusual manner. The act of pouring kerosene upon the person of the deceased and setting her ablaze, followed by immediate act of not dousing the fire and vanishing from

the spot without making any attempt to save her, is an act of such nature so as to disentitle the appellants from seeking the benefit of either Exception 1 or Exception 4 to Section 300 IPC.

69. This court therefore comes to the conclusion that the prosecution has proved the case beyond reasonable doubt and the conviction is proper. The other minor contentions raised with respect to production of public documents without identifying the signature, trial court failing to mention that it was a homicidal death, in the facts of the present case, pales into insignificance as we hold the dying declaration to be credible. Both the Appeals therefore stand dismissed and the conviction of the Appellants is upheld.

70. Both the Appeals stand disposed of accordingly. Pending Applications, if any are also disposed of.

(SHREERAM V. SHIRSAT, J)

(MANISH PITALE, J.)