Uttam vs The State Of Maharashtra on 2 June, 2022

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Bench: Hima Kohli, B.R. Gavai

Criminal Appeal No.485 of 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.485 OF 2012

UTTAM .… APPELLANT

VERSUS

THE STATE OF MAHARASHTRA …. RESPONDENT

JUDGMENT

HIMA KOHLI, J.

1. The present appeal is directed against the judgment dated 26 th July, 2010 passed by the Division Bench of the High Court of Bombay at Nagpur Bench. The High Court has dismissed the appeal preferred by the appellant against the judgment and order dated 29 th April, 1997 passed by the 8th Additional Sessions Judge, Nagpur, convicting him for the offence under Section 302 of the Indian Penal Code, 1860 1 and sentencing him to suffer imprisonment for life with a fine of 1,000/- (Rupees one thousand) and in default thereof, to suffer simple imprisonment for a period of three months.

1 for short 'IPC' Criminal Appeal No.485 of 2012

2. The case set up by the prosecution is that the deceased, Pushpabai and the appellant had got married on 19th March, 1994. There was no issue from the marriage. The appellant was a T.V. Mechanic. It was alleged that the appellant was having an illicit relationship with a widow residing near their house, namely, Kusum Gaikwad. On 26 th March, 1995, the appellant and Kusum Gaikwad went to watch a movie. When he returned home in the evening hours, he was confronted by his wife for having gone to watch a movie with Kusum Gaikwad. The appellant quarrelled with Pushpabai and told her that Kusum Gaikwad was his paramour. He had also beaten Pushpabai. On

the very next day, i.e., on 27 th March, 1995, between 11.00 a.m. and noon, the appellant had again picked up a quarrel with Pushpabai and he told her that he would not leave Kusum Gaikwad. On Pushpabai demanding a divorce, the appellant lost his temper and assaulted her. Thereafter, he poured kerosene on his wife and set her on fire by lighting a match stick. At this, the appellant's brother rushed to extinguish the fire by pouring water on her. Pushpabai sustained severe burn injuries on her face, breast, stomach, both hands and legs. She was taken for treatment to Mayo Hospital, Nagpur where she succumbed to her injuries on 31 st March, 1995.

3. The information about the aforesaid incident was communicated by Mayo Police Booth, Nagpur to the Investigating Officer 2 Sub-Inspector Madhukar Gite (PW-14). The I.O. was informed that Pushpabai had caught fire on account of the border, i.e., pallu of her saree falling on the stove where she was preparing snacks. On receiving the above information, the I.O. 2 for short 'IO' Criminal Appeal No.485 of 2012 made an entry in the Station diary and proceeded to the hospital, where he recorded the statement of Pushpabai at 3.20 p.m. in the presence of two panchas (Ex.47). This was the first dying declaration of the deceased. In a gap of about one hour, the statement of Pushpabai was recorded by the Special Executive Magistrate 3 (PW-9) between 4.30 and 5.00 PM (Ex.38). This was the second dying declaration.

4. Vide order dated 3rd February, 1997, charges were framed by the trial court against the appellant under Section 302 IPC. As the appellant pleaded not guilty, the matter was taken to trial. On its part, the prosecution examined 15 witnesses, including Ramkrishna Mahadeo Uchale (PW-2), father of the deceased; Raju Larokar;, SEM (PW-9); Samir Vijay Choudhary Junior Resident Doctor (PW-10); Dr. Naresh Chandra Sethia Medical Officer; (PW-11); Balaji Mohod (PW-12), the Mediator who had arranged the marriage of the parties; Prabhakar Bhaurao Patil PSI (PW-13); SI Madhukar Gite (PW-14), who was the I.O.; and Rushi Shionkar API (PW-15). Out of fifteen witnesses, seven witnesses had turned hostile. Vide judgment dated 29th April, 1997, the appellant was convicted by the trial Court for having murdered his wife by pouring kerosene on her and setting her on fire. He was handed down a sentence of life imprisonment with fine. For holding the appellant guilty of the offence, the trial court relied on the two dying declarations of the deceased recorded in writing by PW-9 and PW-14 and the evidence of PW-2 and PW-12, who deposed that the deceased had stated to them how the incident had taken place.

3 for short 'SEM' Criminal Appeal No.485 of 2012

5. Aggrieved by the aforesaid judgment, the appellant preferred an appeal before the High Court. Though the plea of the appellant who raised a question mark on the veracity of the two written dying declarations was upheld by the High Court, giving credence to the testimony of PW-2 and PW-12 coupled with the Chemical Analyser Report relating to the clothes of the deceased and the appellant that detected kerosene on them, the judgment of the trial Court was upheld and the appeal filed by the appellant was dismissed. The said order has been challenged by the appellant in the present appeal.

6. Mr. Rohan Thanwani, learned counsel for the appellant has assailed the impugned judgment on the ground that although the High Court has discarded the two written dying declarations of the

deceased, one recorded by the I.O. (Ex.-47) and the other recorded by the SEM (Ex.-38), it has still proceeded to uphold the judgment of the Session Court by erroneously placing reliance on the oral dying declarations stated to have been made by the deceased to her father, Ramkrishna Mahadeo Uchale (PW-2) and to the Mediator, Balaji Mohod (PW-12). Learned counsel contended that there were glaring material contradictions between the statements made by the deceased before PW-9 and PW-14 as against the statements of PW-2 and PW-12 inasmuch as before PW-9, the deceased had claimed that the illicit relationship between the appellant and Kusum Gaikwad (PW-8) was the root cause of the quarrel between the couple, whereas the version of PW-2 and PW-12 was that the entire incident was attributable to the dowry demands made by the appellant on the deceased. It was further contended that the version of the deceased as recorded in the first and the second Criminal Appeal No.485 of 2012 written dying declarations was entirely different from what was narrated by PW-2 and PW-12 before the Court. In fact, neither PW-2 nor PW-12 had made any statement to the police under Section 161 of the Code of Criminal Procedure, 1898 4 and both the said witnesses had for the first time made statements only when they entered the witness box during the trial.

7. It was canvassed by learned counsel for the appellant that once the High Court had rejected the written dying declarations of the deceased on the ground that there were several conspicuous loopholes in recording of the said statements, there was no good reason for the High Court to have relied on the oral statements allegedly made by the deceased to PW-2 and PW-12, which were equally unreliable and therefore, ought to have met the same fate as the written dying declarations of the deceased. To buttress his submission that where there are multiple dying declarations and each one is inconsistent with the other, then all the said dying declarations ought to be discarded without any hesitation, learned counsel has cited Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh 5. The unreliability of an oral dying declaration made to a family member in the absence of the doctor was sought to be questioned by citing Arvind Singh v. State of Bihar6, Arun Bhandudas Pawar v. State of Maharashtra7, and Poonam Bai v. State of Chhattisgarh8.

8. On the other hand, Mr. Sachin Patil, learned counsel appearing for the respondent - State of Maharashtra has with his usual vehemence, disputed the arguments advanced by the 4 for short 'Cr.PC' 5 (2007) 15 SCC 465 6 (2001) 6 SCC 407 7 (2008) 11 SCC 232 8 (2019) 6 SCC 145 Criminal Appeal No.485 of 2012 other side and stated that both the written dying declarations, the first one recorded by the I.O. at 3.20 PM and the second one recorded by the SEM (PW-9) at 4.30 PM, on the very same day, were consistent and the deceased had clearly stated that it was the appellant who had set her on fire. He also alluded to the two fitness certificates issued by the attending doctor (PW-

10) in respect of the deceased before her statements were recorded and contended that the said certificates showed that she was in a sound state of mind and competent to depose. Similarly, the oral dying declarations subsequently made by the deceased in the presence of her father (PW-2) and the mediator (PW-12) were also stated to be consistent with the version of the victim and worthy of credence. The narration as to the manner in which the deceased was set on fire was stated to be consistent and it was contended that the cross-examination of the said prosecution witnesses did not elicit anything favourable to the appellant on the above aspect. Learned State counsel referred to the Chemical Analyser Report in respect of the clothes of the deceased and the appellant that were seized from the spot to urge that it lent credence to the version of the prosecution that the appellant

had poured kerosene on the deceased and had set her on fire.

9. In support of his submission that where there are conflicting dying declarations, the Court can accept one and discard the other as long as it is satisfied that the basic statement of the deceased had remained consistent, learned State counsel cited State of Uttar Pradesh v. Veerpal and Another9, Rizan and Another v. State of Chhattisgarh 10 and Bhagwan 9 (2022) 4 SCC 741 10 (2003) 2 SCC 661 Criminal Appeal No.485 of 2012 Tukaram Dange v. State of Maharashtra 11. The decision in Trimukh Maroti Kirkan v. State of Maharashtra12 was cited to state that the onus remains on the accused to explain how the death had taken place within the privacy of the home, away from public gaze.

10. We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and carefully perused the record. The entire issue in the present case hinges on the admissibility and evidentiary value of the dying declarations made by the deceased, two of which were in writing and recorded by PW-9 and PW-14 and the other two were oral and communicated by the deceased to PW-2 and PW-12.

11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 187213 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. It is noteworthy that the said provision is an exception to the general rule contained in Section 60 of 11 (2014) 4 SCC 270 12 (2006) 10 SCC 681 13 for short 'Evidence Act' Criminal Appeal No.485 of 2012 the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy.

12. In Kundula Bala Subrahmanyam and Another v. State of Andhra Pradesh 14, this Court had highlighted the significance of a dying declaration in the following words :

> "18. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most

> unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration……."

13. In Shudhakar v. State of Madhya Pradesh 15, this Court had opined that once a dying declaration is found to be reliable, it can form the basis of conviction and made the following observations :

14 (1993) 2 SCC 684 15 (2012) 7 SCC 569 Criminal Appeal No.485 of 2012 "20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."

14. In Paniben (Smt.) v. State of Gujarat 16, on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus :

> "18. …….. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P.17)
>
> (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 Yadav18 ; Ramawati Devi v. State of Bihar19).
>
> (iii) This 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. (K. Ramachandra Reddy v. Public Prosecutor20) .
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> (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P.21)

(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.22)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.23) 16 (1992) 2 SCC 474 17 (1976) 3 SCC 104 18 (1985) 1 SCC 552 19 (1983) 1 SCC 211 20 (1976) 3 SCC 618 21 (1974) 4 SCC 264 22 1981 Suppl. SCC 25 23 (1981) 2 SCC 654 Criminal Appeal No.485 of 2012

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu24)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar25).

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P.26).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan27).

15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion. 24 1980 Suppl. SCC 455 25 1980 Suppl. SCC 769 26 1988 Suppl. SCC 152 27 (1989) 3 SCC 390 Criminal Appeal No.485 of 2012

16. In Lakhan v. State of Madhya Pradesh 28, where the deceased was burnt by pouring kerosene oil on her and was brought to the hospital by the accused and his family members, the Court noticed that she had made two varying dying declarations and held thus :

> “9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means “a man will not meet his Maker with a lie in his mouth”. The doctrine of dying declaration is enshrined in Section 32 of the Evidence

Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross- examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law 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 a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 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 the 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 a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal Rao v. State of Bombay29 , Rasheed Beg v. State of M.P.30 , K. Ramachandra Reddy v. Public Prosecutor31, State of Maharashtra v. Krishnamurti Laxmipati Naidu32, Uka Ram v. State of Rajasthan33, Babulal v. State of M.P.34 , Muthu Kutty v. State.35, State of Rajasthan v. Wakteng36 and Sharda v. State of Rajasthan37".

28 (2010) 8 SCC 514 29 AIR 1958 SC 22 30 (1974) 4 SCC 264 31 (1976) 3 SCC 618 32 1980 Supp SCC 455 33 (2001) 5 SCC 254 34 (2003) 12 SCC 490 35 (2005) 9 SCC 113 36 (2007) 14 SCC 550 37 (2010) 2 SCC 85 Criminal Appeal No.485 of 2012

17. In Amol Singh v. State of Madhya Pradesh38, when faced with two dying declarations containing inconsistencies, the approach to be adopted by the Court was summarized as under:

"13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P.39) However, if

> some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

18. In Sher Singh and Another v. State of Punjab40, this Court has held thus :

> "16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to 38 (2008) 5 SCC 468 39 (1993) 2 SCC 684 40 (2008) 4 SCC 265 Criminal Appeal No.485 of 2012 be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise."

19. It is thus clear that in cases where the Court finds that there exist more than one dying declarations, each one of them must be examined with care and caution and only after satisfying itself as to which of the dying declarations appears to be free from suspicious circumstances and has been made voluntarily, should it be accepted. As observed in the judgments quoted above, it is not necessary that in every case, a dying declaration ought to be corroborated with material evidence, ocular or otherwise. It is more a rule of prudence that courts seek validation of the dying declaration from attending facts and circumstances and other evidence brought on record. For the very same reason, a certificate by the doctor that the declarant was fit to make a statement, is treated as a rule of caution to establish the truthfulness of the statement made by the deceased.

20. In Kundula Bala Subrahmanyam (supra), this Court had observed that if there are more than one dying declarations, then the Court must scrutinize each one of them to find out whether the

different dying declarations are consistent with each other in material particulars before accepting and relying on the same. At the end of the day, each case must be decided on its own peculiar facts. There can be no hard and fast rule on evaluation of the evidence brought before the Court, including the surrounding circumstances at the time when the deceased had made the dying declaration. The focus of the Court is of ensuring the voluntariness of the process, of being satisfied that there was no tutoring or prompting, of Criminal Appeal No.485 of 2012 being convinced that the deceased was in a fit state of mind before making the dying declaration, of ascertaining that ample opportunity was available to the declarant to identify the accused.

21. In Veerpal (supra), this Court has clarified that a dying declaration can be acted upon without any other corroboration and observed as below :

> "16. Now, on the aspect, whether in the absence of any corroborative evidence, there can be a conviction relying upon the dying declaration only is concerned, the decision of this Court in Munnu Raja41, and the subsequent decision in Paniben v. State of Gujarat42, are required to be referred to. In the aforesaid decisions, it is specifically observed and held that there is neither a rule of law nor of prudence to the effect that a dying declaration cannot be acted upon without a corroboration. It is observed and held that if the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration. Similar view has also been expressed in State of U.P. v. Ram Sagar Yadav43 and Ramawati Devi v. State of Bihar44. Therefore, there can be a conviction solely based upon the dying declaration without corroboration."

22. However, if a dying declaration suffers from some infirmity, it cannot be the sole basis for convicting the accused. In those circumstances, the court must step back and consider whether the cumulative factors in a case make it difficult to rely upon the said dying declaration. In this context, it would be profitable to refer to Nallapati Sivaiah (supra), wherein this Court held as under :

> "46. It is the duty of the prosecution to establish the charge against the accused beyond reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. The evidence of the Professor of Forensic Medicine casts considerable doubt as regards the condition of the deceased to 41 (1976) 3 SCC 104 42 (1992) 2 SCC 474 43 (1985) 1 SCC 552 44 (1983) 1 SCC 211 Criminal Appeal No.485 of 2012 make a voluntary and truthful statement. It is for that reason non-examination of Dr. T. Narasimharao, Casualty Medical Officer, who was said to have been present at the time of recording of both the dying declarations attains some significance. It is not because it is the requirement in law that the doctor who certified about the condition of the victim to make a dying declaration is required to be examined in every case. But it was the obligation of the prosecution to lead corroborative evidence available in the peculiar circumstances of the case.

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> 52. The dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording the dying declaration—be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The evidence and the material available on record must be properly weighed in each case to arrive at a proper conclusion.

The court must satisfy itself that the person making the dying declaration was conscious and fit to make statement for which purposes not only the evidence of persons recording the dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration."

23. In Arvind Singh (supra), this Court has held that dying declaration should be dealt with care and caution and corroboration thereof, though not essential, is expedient in order to strengthen the evidentiary value of the declaration. Even where independent witnesses may not be available, all the precautions should be taken when it comes to acceptance of such a statement as trustworthy evidence. In other words, even though direct evidence may not be available, circumstantial evident without a break in the chain of events, would add weight to the evidentiary value of the dying declaration.

24. The principles governing the circumstances where the courts can accept a dying declaration without corroboration, have been dealt with extensively in Khushal Rao(supra) and for ready reference, reproduced as under :

> "16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have Criminal Appeal No.485 of 2012 come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for

> observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

25. The credibility of a dying declaration recorded by the Magistrate has also come up for consideration in several cases and it has been held that a Magistrate being an uninterested witness and a respected officer and there being no circumstances or material to suspect that he would have any animus against the accused or would in any way be interested for fabricating a dying declaration, such a declaration recorded by the Magistrate, ought not be doubted. Absence of corroborative evidence for convicting an accused based on a dying declaration has been a matter of discussion in several cases [Ref.: Munnu Raja (supra), Paniben (Smt.) (supra), Ram Sagar Yadav (supra), Ramawati Devi (supra) and Veerpal (supra)].

Criminal Appeal No.485 of 2012

26. Coming back to the case at hand, there is no dispute about the fact that the deceased did receive severe burn injuries on 27 th March, 1995 at her house. Dr. Nareshchandra Sethia (PW-11), who had conducted the postmortem, stated that she had received burn injuries on both arms and legs, chest, abdomen, back, head, neck and face to the extent of 93%. He also deposed that the probable cause of her death was due to the said burn injuries.

27. For convicting the appellant, the trial Court had primarily relied upon the two written dying declarations of the deceased, one recorded by the SEM (PW-9) and the other by the IO (PW-14) and the oral dying declarations stated to have been made by the deceased to her father (PW-2) and Balaji (PW-12), the Mediator who had settled the marriage of the parties. However, noting the several loopholes in the procedure adopted while recording the dying declarations by the SEM (PW-9) and the IO (PW-14), the High Court found it unsafe to rely on them and kept them aside. The reasons are not far to see.

28. Coming to the first dying declaration recorded by the IO, Sub-Inspector Madhukar Gite (PW-14), the High Court found it difficult to rely on the same for the following reasons:

> (a) the requisition letter that PW-14 had stated he had received at the police station mentioning inter alia that the deceased had caught fire due to the border of her saree (Pallu) falling on the burning stove at the time of preparing snacks on the stove at her house at about 12.30 p.m., on the fateful day, did not mention the name of the hospital where the deceased was admitted. Pertinently, it was on Criminal Appeal No.485 of 2012 the basis of the said requisition letter that PW-14 had proceeded to the Hospital to meet the deceased and record her statement;

(b) there was an ambiguity regarding the source from which PW-14 had received the aforesaid information and no effort was made to clarify the said ambiguity during the course of trial;

(c) PW-14 did not obtain any certificate from the attending doctor so as to establish the physical and mental condition of the deceased before recording her statement;

(d) the doctor was not even present when the statement of the deceased was recorded;

(e) the dying declaration was not recorded by PW-14 in seclusion. Due to the presence of the relatives of the deceased at the time of recording her statement, the probability of the deceased being prompted/tutored could not be ruled out.

29. Following were the reasons that collectively weighed with the High Court for disregarding the second written dying declaration recorded by the SEM (PW-9):

(a) the attending doctor did not examine the deceased in the presence of PW-9 before her statement was recorded;

Criminal Appeal No.485 of 2012

(b) the statement of the deceased was recorded by PW-9 in the absence of the doctor;

(c) the doctor did not make any endorsement on the requisition letter in the presence of PW-9;

(d) PW-9 did not record the statement of the deceased himself. Instead, he delegated the task to the police constable who reduced the statement of the deceased into writing;

(e) after reducing the statement into writing, the same was not read over to the deceased before her signatures were obtained;

(f) the statement of the deceased was not recorded in a question-answer format.

30. The above infirmities were considered more than adequate for the High Court to have wholly discarded the two written dying declarations of the deceased.

31. Since there is no challenge laid to the findings returned by the High Court for discarding the two written dying declarations finding them riddled with deficiencies, thus making them unreliable, we do not propose to delve into their credit worthiness. Suffice it is to say that there was every reason for the High Court to have found them untrustworthy. Instead, it is considered appropriate to examine the worth of the oral dying declarations stated to have been made by the deceased in the presence of PW-2 and PW-12.

Criminal Appeal No.485 of 2012

32. Ramkrishna Mahadeo Uchale (PW-2), father of the deceased deposed that he had received a message regarding his daughter getting burnt and had rushed to Mayo Hospital where she was admitted. He noticed that the deceased had sustained burn injuries and was in a serious condition. He enquired from her as to how did the incident take place to which she stated that when she was cleaning wheat grain, on the fateful day, the appellant had come to the house, beaten her, poured kerosene oil on her body and had set her on fire, while tying her hands. PW-2 deposed that after her marriage to the appellant in the year 1994, his daughter used to complain that the appellant used to illtreat her on account of demanding money and used to suspect her character. He stated that he had lodged a report with the Pardi Village Police Station regarding the same. During his cross-examination, PW-2 had denied that his statement was recorded by the police during the investigation. Although the Assistant Public Prosecutor was permitted to re-examine PW-2 on the above aspect, but nothing material emerged from the said re-examination except that he stated that an inquiry was made by Lakadganj police relating to the burning of his daughter. Significantly, during the extensive cross-examination of the I.O. Sub-Inspector Madhukar Gite (PW-14), he had categorically stated that he had recorded the statement of PW-2, but during his cross-examination, PW-14 was not confronted with any of the claims made by PW-2 pertaining to the appellant having assaulted the deceased for money or of suspecting her character, etc. In fact, at his turn, PW- 14 had denied the fact that he had not recorded the statement of PW-2. Criminal Appeal No.485 of 2012

33. The second oral dying declaration was made by the deceased to Balaji (PW-12), the Mediator who was instrumental in solemnizing the marriage of the appellant and the deceased. Though he deposed that the appellant had made several demands on the deceased after the marriage, including cash and a gold chain and that he used to threaten her that if she did not bring money from her parents, he would beat her, during his cross-examination, he admitted that he did not state so before the police. PW-12 further stated that he along with PW-2 had gone to visit the deceased at her house in the absence of the appellant and at that time, she had complained that the appellant used to beat her and requested that she be taken back to her parental home. Thereafter, PW-12 and PW-2 had lodged a report against the appellant at the Lakadganj Police Station. He further stated that the deceased was brought back to her parent's home for fifteen days. After she had returned to her matrimonial house, fifteen days down the line, PW-12 claimed to have received a chit stating that the deceased had caught fire and was admitted in Mayo Hospital. When he visited the hospital, the deceased told him that when she was cleaning wheat, the appellant had come home, tied her hands with a ribbon and had taken her inside. Thereafter, the appellant had poured kerosene on the body of the deceased and lighted a match stick setting her on fire.

34. A perusal of the testimonies of PW-2 and PW-12 show that they have offered varying versions of what had allegedly been narrated to them by the deceased. Both of them stated that failure to satisfy the appellant's constant dowry demands had led to the incident. There was no mention of the illicit relationship of the appellant with a widow in the neighbourhood Criminal Appeal No.485 of 2012 which was a constant cause of quarrel between the deceased and her husband and had led to the incident. Pertinently, both the said witnesses stated that their statements were not recorded by the police during the investigation and that they had deposed for the first time only when they had

entered the witness box during the trial.

35. In Arun Bhanudas Pawar (supra), cited by learned counsel for the appellant, this Court had declined to accept the testimony of an interested witness who happened to be the mother of the victim, in the absence of any corroboration from an independent witness including the Medical Officer who was attending to the victim, to prove that the victim had regained consciousness when the mother had met him in the hospital and had named the accused as the assailant along with two other associates. An additional factor that weighed with the court for rejecting the testimony of the mother was that she had not stated so in her statement recorded by the Police under Section 161 Cr.P.C. and it was for the first time before the Court that she had made such a statement. Holding that the oral dying declaration made by the deceased ought to be treated with care and caution, since the maker of the statement cannot be subjected to any cross-examination, the Court found fault with the High Court and trial Court for having accepted the said oral dying declaration allegedly made by the deceased to her mother, an interested witness, when there was nothing to show that the deceased was in a fit condition to make an oral declaration to his mother. In Poonam Bai (supra), a similar view was taken by this Court and it was held thus:

> Criminal Appeal No.485 of 2012 "16. As far as the oral dying declaration is concerned, the evidence on record is very shaky, apart from the fact that evidence relating to oral dying declaration is a weak type of evidence in and of itself. As per the case of the prosecution, the deceased had made an oral dying declaration before Lalita Sahu (PW 2), Pilaram Sahu (PW 3), Parvati Bai (PW 4), and others. Though PWs 2, 3 and 4 have deposed that the deceased did make an oral dying declaration before them implicating the appellant, this version is clearly only an afterthought, inasmuch as the same was brought up before the trial court for the first time. In their statements recorded by the police under Section 161 of the Code of Criminal Procedure, these witnesses had not made any statement relating to the alleged oral dying declaration of the deceased. These factors have been noted by the trial court in its detailed judgment. Thus, the evidence of PWs 2, 3 and 4 relating to the oral dying declaration is clearly an improved version, and this has been proved by the defence in accordance with law."

36. We are of the opinion that once the High Court had disagreed with the Session Court and discarded the two written dying declarations of the deceased due to several glaring lacunae in the procedure adopted by the SEM (PW-9) and the I.O. (PW-14) in recording the said statement, then the appellant could not have been indicted on the oral testimony of PW-2, father of the deceased and PW-12, family friend, both of who were interested witnesses and whose evidence runs contrary to the versions of the deceased recorded by PW-9 and PW-14. It must be remembered that all the four dying declarations, two in writing and the other two oral, were based on the statements given by the deceased at different times on the very same day, i.e., 27th March, 1995, when she had suffered 93% burn injuries and there are serious doubt about her being mentally and physically fit to give her statement. The IO (PW-14) had recorded the first dying declaration at 3.20 p.m. this was followed by the SEM (PW-9) having recorded the second dying declaration between 4.30p.m. and 5.00 p.m. It was on the very same day that PW-2 and PW-12 had also met the deceased at the hospital and

claimed that Criminal Appeal No.485 of 2012 she had informed them as to how she had received the burn injuries and named the appellant as the culprit.

37. Both, PW-2 and PW-12 have deposed that in her oral dying declaration, the deceased had referred to the dowry demands made on her by the appellant and the fact that he had suspected her character, which led to the alleged incident. As noted above, nowhere in their testimonies is there any reference made to the prosecution version that the appellant was having an illicit relation with a widow residing in the neighbourhood, which was the main cause of acrimony between the couple and had resulted in the incident. The diametrically different version of the reasons that led to the alleged incident casts a shadow on the entire testimony of PW-2 and PW-12, making it unsafe to rely on them and indict the appellant for the charge framed against him. We are therefore of the opinion that the prosecution has failed to discharge the obligation cast on it of leading trustworthy corroborative evidence to back-up the testimonies of PW-2 and PW-12.

38. In the light of the evidence discussed above and being mindful of the principles governing appreciation of the evidence related to multiple dying declarations, we find it difficult to endorse the conclusion arrived at by the High Court. The evidence of PW-2 and PW-12 cannot be treated as stellar enough to hold the appellant guilty for the offence of murdering his wife. Hence, he is entitled to being granted benefit of doubt. Criminal Appeal No.485 of 2012

39. As a result of the aforesaid discussion, the impugned judgment is quashed and set aside. Consequently, the appellant is acquitted of the charge framed against him and is directed to be set at liberty forthwith, if not required in connection with any other case.

.....J. [B.R. GAVAI] .....J. [HIMA KOHLI] NEW DELHI, JUNE 02, 2022 IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION UTTAM .. APPELLANT(S) VERSUS THE STATE OF MAHARASHTRA .. RESPONDENT(S) O R D E R For the reasons to be recorded separately, the appeal is allowed.

The judgment and order of the Additional Sessions Court, Nagpur dated 29.04.1997 and that of the High Court dated 26.07.2010 are quashed and set aside.

The appellant is acquitted of all the charges and directed to be set at liberty forthwith, if not required in connection with any other case.

.....J.
[B.R. GAVAI]

.....J.
[HIMA KOHLI]

NEW DELHI,
JUNE 02, 2022.