Supreme Court of India
Goverdhan Raoji Ghyare vs State Of Maharashtra on 19 August, 1993
Equivalent citations: 1993 (2) ALT Cri 637, 1993 CriLJ 3414, 1993 (3) Crimes 241 SC, II (1993) DMC 305 SC, JT 1993 (5) SC 87, 1993 (3) SCALE 485, 1993 Supp (4) SCC 316
Author: G Ray.
Bench: K J Reddy, G Ray
JUDGMENT G.N. Ray. J.

1. This appeal is directed against the order of conviction under Section 302 I.P.C. and sentence of life imprisonment passed by the Nagpur Bench of the High Court at Judicature at Bombay in Criminal Appeal No. 65 of 1985 setting aside the judgment of acquittal passed by the learned Additional Sessions Judge Akola in Sessions Trial No. 74 of 1984.

2. The prosecution case in short is that the deceased was married to the accused Goverdhan on 11th June, 1983. The deceased was the daughter of Laxrnan and the sister ol complainant Suresh and Purushottam. The house of Laxman is situated at Ural K.D. and the house of the accused is situated at Ural B.K. Both the villages are adjacent and are separated by a river. After the marriage, Sunanda went to the house of the accused and she was treated well for about two to three months only. Thereafter, the accused started beating her on the ground that she could not cook properly and that she was illiterate and the accused could have married a working girl. A few days before Dussehra festival, the deceased Sunanda arrived at the house of Laxman and demanded a sum of Rs. 500/- telling that her husband was in need of money for the purpose of service. The amount was handed over by laxman to Sunanda with a view that the accused would not beat her further and would treat her well. Three- four days before Dussehra, Laxman sent Suresh for bringing Sunanda at his house and she was brought by Suresh. During the stay at the house of Laxman, Sunanda used to tell that the accused had been beating her. On the next day of Dussehra, the accused came to the house of Laxman for taking Sunanda. As the parents of Sunanda were not in the house, Suresh, the brother of Sunanda, asked the accused to wait till the arrival of the parents but the accused went away. After some days, accused along with his brother and one Sonaji came to the house of Laxman for settling the matter. But he had told that Sunanda would be beaten if she would not cook properly. Laxman on hearing such statement, did not send Sunanda with them. Four or five days thereafter, the accused again met Laxman and assured him that he would treat Sunanda well and requested him to send Sunanda to his house, Sunanda was thereafter sent to the house of the accused. Unfortunately, the incident of beating by the husband still continued and at the time of next 'Tilsankrant' beating of Sunanda by the accused had taken place in the field in presence of Sunanda's brother, Purushottam. Purushottams informed Laxman that the accused had beaten Sunanda for the reason that she had refused to convey the message to her brother Suresh through Purushottam for bringing the amount for the accused. On March 10, 1984 in the evening Suresh had just come home from Hatrun, where he was serving as a teacher and was relaxing. He was informed by one Baban that sister Sunanda was burnt. He went to her house in Ural ked. and he found that Sunanda was kept near the door. On enquiries being made as to what had happened to Sunanda, Sunanda informed him that her husband had poured kerosene oil on her body, and then burnt her. Suresh thereafter went to the Police Station at Ural Bk. and lodged the written report. Laxman also corning to know of such burning came to the house of Sunanda after calling his family members. On the basis of the

complaint lodged by Suresh, A.S.I. Tale registered the offence under Section 307 I.P.C. and went to the spot. The Sub-Inspector was accompanied by Suresh. On reaching the house of the accused, A.S.I. Tale recorded the dying declaration of Sunanda in presence of the Panchas Madhukar, Baliram and Ambadas Patil. Such dying declaration was recorded in a question and answer form. Sunanda had stated in her dying declaration that the accused ignited the terricot saree on her person with a match stick and laid another terricot saree and Manila shirt on her person and those clothes completely caught fire and she sustained burns. A.S.I. Tale then prepared the Panchanama at the spot. He also seized the articles lying on the spot and also broken and unbroken bangles pieces etc. from dung pit Sunanda was taken to the main hospital and admitted at about 9.45 P.M. Shri Tidke, A.S.I. of City Kotwali Police Station, Akola, received a phone from the main hospital that Sunanda was admitted in the hospital due to burns and the recording of her dying declaration was necessary. Shri Tidke sent the D.D.memo to Taluka Magistrate through the Police Constable Pradeep. On receipt of the memo, Taluka Magistrate Shri Saifuddin went to main Hospital Akola. The said Magistrate contacted the doctor-in-charge of the ward and made an enquiry in writing as to whether the patient was conscious to give statement. The doctor certified that the patient was fit to give the statement. Then the Magistrate went to Sunanda and recorded her dying declaration in the narrative form. Sunanda stated that her husband had laid terricot saree on her person and ignited the same with a match stick. She also stated that she was burnt by none-else but by her husband. After the dying declaration was recorded the Taluk Magistrate obtained Sunanda's thumb impression thereon and again obtained a certificate of the doctor regarding the conscious state of mind of the patient at the foot of the dying declaration. Sunanda expired on March 14, 1984. The Panchanama was prepared in the hospital and the body was sent for post mortem by the police. Dr. Ahmad conducted the post mortem examination and issued the post mortem report. In view of the death of Sunanda, the case was converted from the offence under Section 307 I.P.C. to an offence under Section 302 I.P.C. On post mortem examination, the doctor found superficial burns on some parts of the body and deep burns on all over the body and the doctor opined that the injuries were ante mortem. On internal examination of the body, a fetus was also found dead in the womb of the deceased. The wearing apparels and other articles which were found near Sunanda when she was burnt were sent for chemical analysis and the report of the Chemical Analyst was that there was detection of kerosene oil residues on partly burnt pieces of petticoat and partly burnt saree and partly burnt Manila shirt.

3. A Judicial Magistrate First Class, Balapur, committed the case under Section 209 Cr.P.C. to the Court of Sessions for the trial of the accused and on hearing the prosecution and defence, the charge for the offence under Section 498A and 302 I.P.C. was framed against the accused. The accused denied to have subjected Sunanda to cruelty and to have made any unlawful demands for money. He also denied to have committed the murder of Sunanda by setting her on fire. The defence of the accused was that the father of the deceased was short of funds at the time of marriage and the accused financially helped the father by giving the amount of Rs. 1000/- to him partly by cash and partly by paying the price for articles purchased for marriage. Although Suresh agreed to repay the amount within six months, only Rs. 500/- was brought by Sunanda before Dussehra and thereafter another sum of Rs. 200/- was paid. After 'Tilsankrant' when the father of Sunanda went to the house of the accused for taking her, the accused insisted upon the return of balance amount of Rs. 300/-. As the father did not pay the said amount, Sunanda was not sent with the father. It was the

further case of the accused that despite instruction given by the husband to Sunanda twice or thrice, Sunanda had been to father's house instead of going to the field. On the day of the incident, the accused reached home at 1.30 P.M. back from the typing class at Akola, and there was exchange of words between him and Sunanda over the preparation of food and he also took Sunanda to task for not going to the field. Sunanda expressed the desire to go to her parents house at the time of delivery but the accused told her in anger that he would not allow her to go to the parents house till her death. Sunanda became agitated and stated that the relations of the accused and herself as husband and wife had come to an end and while speaking so, she had wiped out 'kum kum' on her forehead and took out the Mangalsutra and also took out the bangles, foot finger rings and Besar At that time, the accused was informed by one person that the son of his brother was sick. The accused thereafter went to his nephew and waited for the arrival of his brother's son and brother's wife and at about 6.00 to 6.30 P.M. Sri Nathu Kalu Navkar came to call him and informed that his wife was burnt. The accused rushed to his house. Suresh and some police men had arrived at that time and the accused was not allowed to enter the house by the persons accompanying him. He was made to sit outside the courtyard by the police. Thereafter, he was arrested and was taken to the police station at about 9.30 to 10.00 P.M.

4. The learned Sessions Judge did not accept the dying declaration recorded by the police. The learned Sessions Judge referred to the Statement of the prosecution witness Madhukar and noted that the said witness had stated that in her dying declaration the deceased stated that her husband had put kerosene on her body but the police did not record it, and the police also did not allow the panchas to read the dying declaration. The learned Sessions Judge was of the view that the evidence of the said witness had suggested that the police must not have recorded the dying declaration exactly according to the statement of Sunanda. The learned Sessions Judge also drew an adverse inference about the correctness of the dying declaration recorded by the police because Of the insertion of Manila shirt also put on the person of Sunanda in the recorded dying declaration at a later stage. The learned sessions Judge was of the view that if Sunanda had stated that the accused had put Manila shirt on the person of Sunanda, it should have appeared in the dying declaration straightaway and not by way of insertion. The learned Sessions Judge also noted that the dying declaration Ex.19 was not in the handwriting of A.S.I. Tale. It was scribed through a police constable. The A.S.I. dictated the same and the scribe had written accordingly. The learned Sessions Judge also doubted the mental condition of Sunanda when she made the dying declaration to the police. So far as the dying declaration recorded by. the the Taluka Magistrate is concerned, the learned Sessions Judge had noted that the said dying declaration of Sunanda in the hospital was taken on the same date between 11.00 and 11.20 P.M. The learned Sessions Judge was of the view that although a certificate was given by the doctor about the mental condition of the deceased before the dying declaration was recorded by the Magistrate, such certificate was issued by the doctor without examining the patient. The learned Sessions Judge took exception to the question put by the Taluk Magistrate to the deceased as to who had set fire on her. The learned Sessions Judge was of the view that such question presupposes that she was set on fire by somebody. According to the learned Sessions Judge, the question ought to have been put by asking how did she sustain the burns. The learned Sessions Judge noted that the Magistrate did not ask a question to the patient as to whether she was getting trouble at the time of giving declaration and he also did not ask her whether her mental condition was proper. The learned Sessions Judge was of the view that since she

was burnt and was in great physical agony, it was quite likely that she was not in a position to give a proper dying declaration. The learned Sessions Judge also held that the learned Magistrate had committed serious irregularity by not putting a direct question to the injured to the effect as to whether she was mentally fit to make any statement at that time. The learned Sessions Judge was of the view that although the doctor had certified that the patient was in a fit state of mind to give a statement, such certificated was not sufficient because there was a distinction between conscious state of mind and fit state of mind. The learned Sessions Judge held that although both the dying declarations are consistent in some material particulars, the time of occurrence of the incident stated in these dying declarations was different. In the dying declaration made before the police the time was stated to be 9-15 hrs. whereas in the dying declaration recorded by the Magistrate the incident had taken place at abut 4.00 to 5.00 P.M. The learned Sessions Judge was therefore not inclined to accept both the said dying declarations and he held that the possibility of tutoring was also not excluded. Since Sunanda was accompanied by her relatives while she was taken to the Main Hospital, the second dying declaration was also not free from doubt. The learned Sessions Judge also did not accept the prosecution case for not examining independent witnesses from the vicinity of the house of the accased. The learned Sessions Judge was of the view that hearing the cries of Sunanda, a number of persons must have reached there but the prosecution ought to have examined such independent witnesses and except Mahadeo Zadokar no other independent witness was examined. The learned Sessions Judge held that no-examination of independent witnesses was fatal to the prosecution case. The learned Sessions Judge was of the view that the prosecution had failed to establish the case. Accordingly the accused was acquitted by him of both the charges.

5. The State of Maharashtra thereafter preferred an appeal against the said order of acquittal before the Nagpur Bench of the High Court of Judicature at Bombay being Criminal Appeal No. 65 of 1985. The High Court however did not accept the reasonings given by the learned Sessions Judge. The High Court analysed the evidences and gave elaborate reasons for discarding the theory of committing suicide by the deceased and we are in full agreement with such reasons. The High Court has noted that the accused had no love for his wife. The plea of the accused that he was not present in the house and had been to his brother's son who was indisposed was also not accepted by the High Court. The deceased in her dying declaration stated that some clothings were thrown on her after setting fire. The High Court had noted that the blanket which was used by the outsider for extinguishing the fire did not contain any kerosene oil. Hence, the suggestion that the other clothings might have been put on her person while extinguishing the fire could not be accepted. The High Court has analysed both the dying declarations and has come to the finding that the reasons indicated by the learned Sessions Judge for discarding dying declarations are contrary to the evidence adduced in the case. The High Court is also of the view that there is no evidence whatsoever that Sunanda's relations had talked to the deceased and had tutored her. The High Court has held that nobody had induced Sunanda to implicate the accused and mere presence of the relations in the hospital cannot lead to an inference that she might have been tutored so as to implicate the accused. The High Court has also noted that in the dying declaration the deceased stated that the husband had removed her Mangalsutra, bangles, nose rings and toe rings and it was also stated by the deceased that such articles were taken out by the husband and thrown away. The Panchanama made on the spot being Ex.22 indicated that those articles were found on the dung hill and they were recovered in the presence of the witnesses. The High Court has also noted that the

accused could not furnish proper explanation as to why the said articles were found on the dung hill. The High Court has noted that the doctor had certified that the patient was in a fit state of mind to make the statement and such statement was recorded by Taluka Magistrate. It does not appear from any convincing evidence that Sunanda could not answer the question or she was semi conscious simply because she was in severe pain due to burn injuries. Hence, there was no occasion to presume that she was not in a fit condition to make a statement by way of a dying declaration. The High Court has noted that the deceased had also made a statement to the brother that the husband has set her on fire and in both the dying declarations such statement had been made. In the aforesaid circumstances, there was no reason to discard the dying declarations and the High Court is of the view that the learned Sessions Judge was wrong in discarding the same. In that view of the matter, the High Court allowed the appeal, set aside the order passed by the learned Sessions Judge and convicted the accused for the offence under Section 302 IPC and passed the sentence of life imprisonment on the accused.

6. Mr. Bhasme, learned counsel appearing for the appellant, has strongly contended that the learned Sessions Judge has given very cogent reasons for giving a verdict of acquittal in favour of the accused. The High Court should not have reassessed the evidence for the purpose of taking a different view. He has contended that the reasoning given by the learned Sessions Judge were not perverse. A reasonable view had been taken by the learned Sessions Judge and an order of acquittal had been passed on such reasonable view. It is a settled law that if the view for basing the judgment of acquittal is reasonable one, the order of acquittal should not be reversed by re-appreciating the evidence and thereafter taking another view which may also be possible. Mr. Bhasme has contended that the learned Sessions Judge has drawn adverse inference for not examining independent witnesses. In the facts of the case, the finding of the learned Sessions Judge that there were material discrepancy in the case sought to be established by the prosecution should have been accepted by the High Court. Mr. Bhasme has contended that the High Court has accepted the dying declarations recorded by the police and also by the Taluka Magistrate despite the fact that there were discrepancies as to the time of the incident and there was interpolation in the-dying declaration recorded by the police and it was an admitted position that the A.S.I. had not recorded the dying declaration himself but on his dictation a police constable had scribed the statement. It was not stated in the dying declaration that the kerosene oil was poured on her body and the fire was set on. Hence, the case of setting the fire on kerosene oil should not have been accepted by the High Court. Mr. Bhasme has submitted that it is an admitted case that the relations including the parents of the deceased were present in the hospital where the deceased was admitted. Even the brother of the deceased, Suresh, was present when the alleged dying declaration was taken by the police. In the aforesaid circumstances, the possibility of tutoring the deceased was required to be eliminated. The learned Sessions Judge after scrutinising the facts and circumstances of the case came to the finding that there was every possibility of the deceased being tutored for the purpose of making a dying declaration. Such view being reasonable and consistent with the facts and circumstances of the case, should not have been discarded by the High Court. Mr. Bhasme has also submitted before us that admittedly the deceased was in advanced stage of pregnancy being pregnant for about seven months. He has submitted that it is not unusual that during the pregnancy, particularly during the first pregnancy the would-be mother undergoes various mental and physical changes and often becomes hysteric and mentally imbalanced. There is no direct evidence to establish that the

husband had set fire to the wife. It is an admitted case that there had been quarrel between them shortly before the sad incident and the bangles and mangalsutra had been removed from the body of the deceased. In the aforesaid circumstances, an emotionally disturbed pregnant woman is likely to commit suicide but unfortunately such aspect has not been properly considered by the High Court. He has, therefore, submitted that High Court had gone wrong in setting aside the order of acquittal and convicting the husband on a charge of murder practically on surmise and conjecture and accepting dying declarations which should not have been accepted for the cogent reasons indicated by the learned Sessions Judge. Mr. Bhasme has submitted that this Court should allow the appeal and set aside the order of conviction and acquit the appellant.

7. The learned counsel appearing for the State has, however, submitted that PW 5 was a neighbored of the deceased who was examined in the case and this PW5 has stated that the deceased had given dying declaration. He has also submitted that even if the dying declaration recorded by the police officer is not taken into consideration for the alleged interpolation, over-writing or for any other infirmity, the dying declaration recorded by the Taluka Magistrate could not have been discarded by the learned Sessions Judge. The learned Taluka Magistrate recorded the dying declaration after obtaining a certificate from the doctor in the hospital that the deceased was mentally fit for making such statement and even after recording the dying declaration a certificate from the doctor about the mental condition of the patient was also taken by the learned Magistrate. The leaned Sessions Judge, in the absence of any positive evidence to the contrary, proceeded erroneously on the footing that there was possibility of the deceased being tutored for making the dying declaration. Such finding was based on surmise only and contrary to the facts and circumstances of the case. The High Court was, therefore, justified in rejecting the same and accepting the dying declaration. The learned counsel has submitted that simply because the learned Sessions Judge has given a judgment of acquittal and has indicated reasons therefor, the High Court in exercise of the appellate power was not bound to accept such reasonings which were contrary to the evidences recorded and did not stand scrutiny. The High Court was, therefore, justified in not accepting the same and passing a judgment of conviction and sentence against the appellant. He has submitted that no interference is called for in this appeal.

8. After giving our anxious consideration to the respective submissions made by the learned counsels for the parties, it appears to us that the dying declarations should not have been discarded by the learned Sessions Judge. The learned Sessions Judge should have noted that both the dying declarations were similar in material particulars. The minor discrepancies in the two dying declarations were not sufficient to invalidate either of the two dying declarations. Even if the first dying declaration recorded by the police officer is not taken into consideration, we do not find any reason to discard the second dying declaration recorded by the Taluka Magistrate. Such dying declaration was recorded by Taluka Magistrate after obtaining a certificate from the doctor that the deceased was in a fit state of mind to make the statement. Even after recording such dying declaration, the learned Magistrate obtained a further certificate from the doctor that the deceased was in fit state of mind to make the statement. The distinction sought to be made out by the learned Sessions Judge that the 'fit state of mind' and "conscious state of mind' were not the same thing, is too hyper-technical in the facts and circumstances of the case. The learned Magistrate put the questions to the deceased and then recorded the statement. It will be wholly unjustified to hold that

simply because the Magistrate did not put a direct question to the deceased as to whether she was in a fit state of mind to make the statement, the dying declaration was required to be discarded. There is no manner of doubt that the deceased was suffering from great physical pain because of extensive burn injuries but on that score alone it could not be presumed that she was not in a fit state of mind to make the statement particularly when the doctor had certified both before and after the statement that she had a state of mind to make the statement. We are also not inclined to agree with the submissions made by Mr. Bhasme that a pregnant woman was likely to be hysteric and mentally imbalanced and there was a possibility of committing suicide because of the imbalanced mind during the state of pregnancy. The deceased was in an advanced stage of pregnancy and according to us it was rather unlikely that a would be mother would commit suicide at that stage for not only killing herself but also the child in womb. From the report of the chemical analyst it transpires that burnt clothes found on the body of the deceased contained kerosene oil but the blanket which was put on her body for extinguishing the fire did not contain kerosene oil. In our view, the High Court is justified in discarding the suggestion that other articles which had been smelling kerosene might have been thrown by other persons in attempt to extinguish the fire. There is no manner of doubt that the Court of appeal is required to take into consideration the reasons given by the trial court in basing a judgment of acquittal, very carefully and if such reasonings are consistent with the evidence, as a matter of prudence, the Court of appeal should not interfere with the order of acquittal, by re-appreciating the evidence and taking some other view. But if the reasonings given by the trial court are contrary to the weight of evidence, the court of appeal would be justified in discarding the same in exercise of its appellate jurisdiction. In the instant case, the High Court has analysed the reasons given by the learned Sessions Judge and has not accepted the same by indicating cogent reasons. As it appears to us, the High Court has taken a very reasonable view in accepting the dying declarations, and passing the judgment of conviction and sentence, we do not think that any interference is called for in this appeal. We, therefore, affirm the impugned judgment of the High Court and dismiss this appeal. It appears that the appellant has been released on bail during the pendency of this appeal. Since the order of conviction and sentence passed by the High Court are upheld by this Court, the appellant will be taken into custody to serve out the sentence.