IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.2199/2018

BETWEEN:

MAHADEVA S/O MARA A,
AGED ABOUT 29 YEARS,
NO.35, 5TH CROSS,
NEAR BASAVANAGUDI CIRCLE,
HEBBAL COLONY,
MYSURU CITY-570016,
PERMANENT ADDRESS
AT NO.5, 2ND CROSS,
NEAR BASAVANAGUDI CIRCLE,
HEBBAL COLONY,
MYSURU CITY-570016. … APPELLANT

(BY SRI. PRASAD B.S., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY METAGALLI POLICE STATION, MYSURU,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU-560001. … RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 11.04.2018 AND 13.04.2018 PASSED BY THE IV ADDITIONAL SESSIONS JUDGE, MYSURU, IN S.C.NO.185/2015 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498A AND 302 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.02.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed challenging the judgment and order of conviction and sentence dated 11.04.2018 and 13.04.2018 passed by the IV Additional Sessions Judge, Mysuru, in S.C.NO.185/2015 convicting the appellant/accused No.1 for the offences punishable under Sections 498A and 302 of IPC.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the prosecution is that marriage of the deceased was performed with the

appellant/accused No.1 about 4 years before the incident. After the marriage, they lived together and led happy married life for 3 months. The charges levelled against accused No.2 is that she was instigating her son i.e., accused No.1/appellant to harass his wife physically and mentally. Accordingly, accused No.1 also harassed the deceased both physically and mentally by suspecting her fidelity. On 11.01.2015 at about 04.00 p.m. when deceased Anitha was alone in the house, the appellant picked up quarrel with deceased stating that if she dies, his mother would perform second marriage to him and he poured kerosene on the deceased and lit the fire. When deceased screamed loudly, PW1 and PW2 came to the spot and extinguished the fire. Thereafter, the injured was taken to hospital and ultimately, she succumbed to the injuries on 17.01.2015 at about 04.20 a.m. in the hospital.

4. Based on the statement made by the deceased in the hospital as dying declaration under Section 161 of Cr.P.C., the police have registered the case and law is set in motion. The second dying declaration also recorded by the Taluk Magistrate and also recorded the statement of witnesses and collected the

materials and filed the charge sheet. Accused Nos.1 and 2 were secured and they did not plead guilty and claim for trial. Hence, the prosecution examined 16 witnesses as PW1 to 16 and got marked the documents at Ex.P1 to P18 and seized MO1 to MO3. On closure of the prosecution evidence, accused Nos.1 and 2 were subjected to 313 statement and they did not choose to lead any defence evidence, but they denied the incriminating circumstances.

5. The Trial Court having considered both oral and documentary evidence placed on record convicted accused No.1 and acquitted accused No.2 and sentenced accused No.1 for life imprisonment and ordered to pay an amount of Rs.5,000/- as fine for the offence punishable under Section 302 IPC and in default of payment of fine, ordered to undergo simple imprisonment for 6 months and accused No.1 is also convicted for the offence punishable under Section 498A of IPC and sentenced to undergo imprisonment for 3 years along with fine of Rs.3,000/- and in default of payment of fine, shall undergo further simple imprisonment for 3 months.

6. Being aggrieved by the judgment of conviction and sentence, the present appeal is filed by the appellant/accused No.1.

7. The learned counsel appearing for the appellant would contend that Sessions Judge ought to have acquitted the appellant on the ground that there is a long delay in filing the complaint before the police and delay has been conveniently used by the complainant and other interested persons to concoct a false case against the appellant with connivance of police. The counsel would vehemently contend that the Trial Judge has committed serious error in holding that there was a motive on the part of the appellant to commit murder of deceased when prosecution has failed to adduce any cogent and reliable evidence in that regard. The counsel also vehemently contend that Trial Court has committed serious error in relying upon the evidence of PW4 who is the father of the deceased and PW5 who is a maternal uncle of the deceased and the evidence of PW10-Thasildar and PW11-doctor and PW13 and PW16, when their evidence is not reliable. The Trial Court has committed an error

in relying upon the evidence of PW4 to PW16 when their evidence is full of material omissions, contradictions and further suffers from legal infirmities. The Trial Court committed an error in relying upon the dying declaration at Ex.P7 and statement at Ex.P1 and fails to take note that the chain of circumstances are not proved and there is no last seen witness and recovery panch is contradictory. The Trial Court ought to have given benefit of doubt to accused No.1 when benefit of doubt given in favour of accused No. 2. The very approach of the Trial Court is erroneous and same leads to miscarriage of justice.

8. The counsel in his arguments would vehemently contend that the statements recorded by the police as well as Tahsildar which have been treated as dying declarations are created documents. The counsel also tried to convince this Court stating that there is a different subspace in the document in both the pages. The counsel would vehemently contend that PW15 who is a videographer has deposed before the Court and his signature was not taken and even last portion of doing the signature is not found in the video. Hence, the Trial Court ought not to have relied upon the same. The counsel also would

contend that Tahsildar not stated that he had called the photographer. Though PW16-doctor certifies that the deceased is capable to give evidence, the same is not substantiated. PW16 categorically admits that not endorsed that in his presence recorded the evidence of the deceased. The counsel also vehemently contend that even the evidence of PW11-doctor that he was allegedly present at the time of recording the statement and the same is not consistent. The counsel would submit that PW4 is the mother of the deceased who had supported the case of the prosecution but PW1 to PW3 have turned hostile. PW5 is also a relative of the deceased and his evidence supports the case of prosecution. The counsel submits that the Court has to weigh the evidence of PW4 and PW5 with great care and caution. The counsel would contend that dying declaration is in format that is Ex.P7 and injured had suffered 60% to 65% of injury and unable to make such statement and there are two dying declarations and the same does not inspire the confidence of the Court. The counsel contend that the appellant is in custody from last 10 years.

9. The counsel in support of his arguments, relied upon the decision of the Division Bench of this Court dated 07.02.2017 in Criminal Appeal No.2940/2012, wherein this Court in a conviction appeal similarly for the offences punishable under Sections 498A and 302 of IPC, while confirming the judgment, modified Section 498A of IPC into Section 326 of IPC. The counsel referring this judgment would vehemently contend that the appellant has already undergone 10 years of punishment and this Court has to modify the same.

10. Per contra, the learned Additional SPP appearing for the State would vehemently contend that defence counsel did not take any defence that no dying declaration was recorded and the same is not in dispute. The counsel also submitted that while making the dying declaration, the same was videographed by PW15 and victim made the statement before the police as well as the Executive Magistrate. The counsel also would submit that both dying declarations are similar and no difference and doctors are also certifies that in both the occasions, victim was capable to give statement. The counsel also would submit that left thumb impression of the victim was taken since she has not sustained

any burn injury to her left thumb and she was fit to make the statement. The certified doctors are also the treated doctors, hence, there is no question of creation of any dying declaration as contended by the counsel appearing for the appellant. The counsel would contend that in both dying declarations, she categorically stated that after having poured the kerosene and lit the fire, appellant ran away from the spot. Though PW5 says that accused was present when he came, the same will not take away the case of the prosecution and minor discrepancies are bound to occur. The counsel would vehemently contend that the Trial Court taken note of evidence of PW4 and PW5 and particularly the evidence of PW10 and PW11. The counsel also would vehemently contend that the Investigating Officer who recorded the statement of victim at the first instance before registering the case and statement was recorded in the presence of PW16. Hence, law was set in motion. Both dying declarations are taken note of by the Trial Court and in detail discussed the same. Hence, the judgment of conviction and sentence of the Trial Court cannot be interfered. The counsel would submit that question of reducing the sentence also does not arise though he

is in custody from 10 years since it is a case of pouring kerosene and setting the fire, as a result, the victim has sustained burn injury to the extent of 60 to 65% and due to septicemia, she lost her breath.

11. In reply to this argument, the learned counsel appearing for the appellant would vehemently contend that Ex.P7 and P9 are the dying declarations and both are verbatim and no changes, thus, the same is nothing but creation of documents.

12. Having heard the learned counsel appearing or the respective parties and also on perusal of the material on record as well as giving anxious consideration to both oral and documentary evidence placed on record, the point that would arise for the consideration of this appeal is:

1. Whether the Trial Court committed an error in convicting the appellant/accused No.1 for the offences punishable under Sections 498A and 302 of IPC and whether it requires interference of this Court?

2. What order?

Point No.1:

13. Before considering the reasons of the Trial Court in convicting the appellant, it is appropriate to mention the sum and substance of the ocular evidence available before the Court since, it requires re-appreciation. To prove the case, the prosecution examined 16 witnesses as PW1 to PW16. Thus, we have to scrutinize the evidence to comes to a conclusion that whether the Trial Court committed an error in convicting and sentencing the appellant or not.

14. PW1 and PW2 are the mother and daughter. They are the neighbours of the appellant. But they did not support the case of the prosecution. However, PW1 and PW2 deposed that they are having acquaintance with PW5 who is the maternal uncle of the deceased, both of them deposed that they did not extinguish the fire. But it is the case of the prosecution that these witnesses have rushed to the spot and extinguished the fire. Thus, these two witnesses have turned hostile and confronted the documents of Ex.P1 and P2 and they denied that such statement was not made before the police.

15. PW3 is sister of the appellant. But she says that deceased committed suicide pouring kerosene on herself. She does not know who had poured the kerosene on the deceased and no panchayat was held. She admits that PW5 is maternal uncle of the deceased. But she says that on 11.01.2015 when she was in the house, someone came and informed about the incident. Thereafter, she immediately went and saw the deceased and found burn injuries on the deceased. But she did not observe that who were there at the spot and also did not enquire them. But she says that PW5 came in a car and took the deceased to the K.R. hospital and no dispute that PW5 only took her to the hospital. She deposed that the deceased was not in a position to give statement. This witness was subjected to cross-examination and suggestion was made and she denies that she has not given any statement as per Ex.P3. But her evidence is very clear that she saw the deceased with burn injuries when she went to the house of the deceased.

16. PW4 is the mother of the deceased and she speaks about performing of the marriage of the deceased with the appellant. She says that accused No.1 was addicted to bad vices

of drinking alcohol and he was suspecting fidelity of her daughter at the instance of his mother and he used to make galata. On the date of incident, she went to attend obituary of her sister and neighbourer called her and informed about the incident. Immediately she went and saw her daughter at the K.R. hospital and she has suffered burn injuries. On enquiry, daughter revealed that her husband/accused No.1 poured kerosene and set fire on her. This witness also identifies the accused before the Court. In the cross examination, she admits that it was a love marriage and also there are surrounding houses. She admits that till birth of the baby, they were cordial and after the birth of the child, accused No.2 gave a house to both of them to live there. The said house is also after the 4 to 5 road of the present house. Both husband and wife were living in the said house and they were cordial in the said house.

17. The other witness is PW5 i.e., maternal uncle of the deceased. He speaks about performing of marriage and having a child. He also reiterates with regard to the bad vices of the appellant. He says that 2 to 3 times, panchayat was conducted and inspite of said panchayat also the appellant did not change

his attitude. His evidence is that PW1 called and informed him that the husband of the victim pouring kerosene lit fire on her. Immediately, he rushed to the spot and found the injured who had suffered with burn injuries and immediately shifted her to the K.R. hospital. On enquiry, she revealed that she insisted to attend the obituary and appellant refused and when she forced for the same, he poured kerosene and set the fire. The police came and conducted the spot mahazar. In the cross examination, PW5 admits that after the marriage, both the appellant and deceased were cordially living together separately and accused No.2 was living separately. But suggestion was made that accused No.1 was going to work and the same was denied. But he says that he was doing coolie work. He categorically says that PW1 called and informed about the incident and immediately, he rushed to the spot alone. He did not bring PW3 along with him. He also admits that he did not enquire others who were present at the spot and PW1 and PW2 also did not tell anything. He admits that he did not made statement before the police that PW1 and PW2 informed him. But he claims that injured herself revealed the same. But he

says that accused No.1 was also present and he did not enquire accused No.1. It is suggested that accused No.1 was not there at the place of incident and the same was denied. Further suggestion was made that appellant went to coolie work on the date of incident and same also denied. He deposed that he did not bring the mother of the deceased and she was being in the car of his friend Mahesh. While taking her, PW3 also accompanied them. It is elicited that the face and body of the deceased was burnt. In the cross-examination, it is suggested that the deceased has not revealed anything and he is falsely deposing the same and the same was denied. It is suggested that he was not in the hospital and the same also denied and further suggestion was made that he did not take the injured to the hospital and the same was denied.

18. The inquest witness is PW6 who says that Tahsildar came and drawn the mahazar and took his signature. So also PW7 is also the inquest witness and both of them identified their signatures at Ex.P4. PW8 is also another inquest witness who also a signatory to Ex.P4 and he says that Tahsildar came and drawn the mahazar and he had signed the same and identified

his signature and also recorded the statement of mother of the deceased. But he is not aware of the contents of the mahazar and he says that not seized any articles in his presence. He was treated as hostile witness. This witness was cross-examined by the learned Public Prosecutor wherein he deposed that he is not aware that what statement was made by the mother of the deceased when the counsel for the accused questioned her.

19. The other witness of the prosecution is PW9 and this witness identifies his signature in Ex.P5 mahazar and he signed the same in the hospital. He also says that his signature was taken in connection with committing suicide by the deceased. He says that in his presence, not seized any articles. Hence, this witness also treated as hostile and he was cross-examined by the prosecutor and suggestions are denied.

20. The other witness is PW10 who is the Additional Tahsildar. In his evidence he says that on 12.01.2015 at about 11.00 a.m., PC 379 – Rajesh came and handed over the memo to record the statement of the injured in terms of Ex.P6. On the same day at around 11.45 he went to K.R.hospital and gave the

request to the doctor to certify that whether she is capable to make statement or not. Thereafter, doctor examined the victim and certifies that she is able to make statement. Then, sent the police and the relatives from the said ward. In the presence of the doctor, recorded dying declaration. In order to confirm her capability, he also put certain questions and she answered the same and he had recorded her answers in column Nos.1 to 20 and thereafter enquired her and on enquiry she revealed that her husband poured the kerosene and set fire on her. On the instigation of his mother, he was subjecting her for both mental and physical harassment. The deceased also stated that appellant abused her telling that if she dies, his mother will make second marriage to him and after pouring kerosene and setting fire, appellant ran away from the spot. When she screamed loudly, PW1 and PW2 came and extinguished the fire. Thereafter, PW5 came to the spot. PW5 and PW3 took the deceased to the hospital. It is also his evidence that after recording the statement made by her, got clarified and took the signature of her left thumb impression on Ex.P7 and identifies

the signature of the victim. The witness says that doctor also certifies and sent the same to the police.

21. It is also evidence of PW10 that on 17.01.2015 at 11.45 a.m., he went and examined the body and also recorded the statement of the witnesses and conducted the inquest and also identified his signature at Ex.P4. This witness was subjected to cross-examination. In the cross-examination, it is elicited that the deceased was admitted to the hospital with the history of burn injuries and cannot tell who was the duty doctor at that time. Dr. Rajesh came to the ward at around 11.50 a.m. and gave the opinion about her capability to make statement. But he has not given that statement to the police. A suggestion was made that her mouth and lips were burnt. But the same was denied. It is also his evidence that he recorded her statement in his own handwriting. But suggestion was made that in page 3, half portion and in the back portion, full sheet is empty and so also in the previous page of page 4. A suggestion was made that in those sheets also would have mentioned the same but the same was denied. It is suggested that he took the signature on the blank paper, that is why he kept the same as blank and the

same was denied. He admits that in column No.19, he mentioned that both the hands were burnt till forearm. It is suggested that in view of burning of the hands, she was unable to put her left thumb impression and the same was denied. It is admitted that in the last page, took the left hand thumb impression and not in all the pages. It is suggested that Ex.P7 is created and same was denied. It is his evidence that with the help of Office Assistant-Satishpal, he has prepared the inquest.

22. The other witness is PW11-doctor who certifies that the deceased was capable to make statement. PW11 says that at the request of PW10, he examined the injured and certified. PW10 recorded her statement. He also signed at Ex.P7 and identified his nature as Ex.P7(g). In the cross-examination, he admits that he was only the treating doctor at the burn ward. At 11.45 a.m., PW10 requested to certify that whether the deceased was able to give statement or not. The deceased was admitted to the hospital in the previous day at 4.50 p.m. and he was giving the treatment to her and given diclofin injection. A suggestion was made that due to the said injection she was in a sedative mood and the same was denied. It is also elicited that

her pulse rate was 90 and BP was 110/70 and she has not sustained any injuries on the face. A suggestion was made that her lips were also burnt and the same was denied.

23. The other witness is PW12 who is a Police Inspector. He deposed that he went and recorded the statement of the injured in the presence of Dr. Anand and the same was got written through his staff-Shekar. Hospital memo was identified as Ex.P8 and dying declaration as Ex.P9 and he identifies his signature as Ex.P9(a). He also took the signature of the left hand of the deceased and doctor also certifies the same and doctor's signature is marked as Ex.P9(c). The assistant who had prepared the dying declaration also signed at Ex.P9 and his signature is marked as Ex.P9(d). Based on the statement of the deceased, case was registered and FIR was issued in terms of Ex.P10 and he identifies his signature as Ex.P10(a). It is also his evidence that he requested the Tahsildar to come and record the statement as per Ex.P6. PW5 showed the spot and drawn the spot mahazar in the presence of CW9 and CW10 in terms of Ex.P5 and seized the articles at the spot and identified them as MO1 to MO3 along with his signature. Accused No.1 was arrested

on the next day at 10.00 a.m. and he also sustained the injury to his left and right hand. Hence, he was sent to the K.R. hospital. Accused No.2 was also near the hospital and she was taken to the custody and she was also sent to the hospital for medical checkup. Thereafter, both accused Nos.1 and 2 are produced before the Court.

24. This witness was subjected to cross-examination. In his evidence, he says that Dr. Anand and Rajesh were treating her. He requested Dr. Anand to certify that whether the deceased is capable to give statement and cannot tell who accompanied the injured and she had sustained injury from head portion to till the leg. It is suggested that she was not in a position to speak and the same was denied. It is also his evidence that he enquired her before recording the statement. But to that effect he did not mention the same and so also for recording the statement with the assistance of the staff was also not made any endorsement. It is suggested that left-hand impressions are different and the same is denied. It is suggested that in the said statement, not made any endorsement that

doctor has certified that she is capable and admits the same. It is suggested that Ex.P9 is created and the same was denied.

25. The other witness is PW13, who conducted the post mortem and noted the burn injuries on the neck, chest portion, abdomen, back and also on the thigh. The cause of death is on account of burn injuries and septicemia. The PM report is marked as Ex.P11**.** In the cross-examination, it is elicited that if fire force was more, this type of injury could be caused to the extent of 60 to 65%. It did not mention that in the left thumb there was any ink mark. But categorically says that left hand fingers were not burnt.

26. The other witness is PW14-Investigating Officer who conducted part of the investigation. This witness says regarding dying declaration and he identified the signature and request letter is marked as Ex.P14 and he says recording of the statement of CW1 to CW4 and CW6. This witness also says conducting of further investigation, drawing of inquest and after the death, also recorded the statement of photographer, collected PM report as well as Ex.P18. This witness was

subjected to cross-examination. In the cross-examination, suggestions were made that he did not record the statement of witness and he did not notice that other items were also burnt in the spot and also no notice was given to PW15 photographer and the same was denied. It is suggested that the same was not videographed and the same was denied.

27. The other witness is PW15 who is the photographer. In his evidence, he says that while giving the dying declaration, he recorded the same. Statement was recorded by the Tahsildar and doctor was also present. He gave the CD containing the statement of the deceased to the police. The said CD is marked as Ex.P17. This witness was also subjected to cross examination. In the cross examination he says that he gave the bill for videographing the same and he collected Rs.1,500/- from the police. A suggestion was made that he did not give any bill and the same was denied. This witness was again further chief examined and Ex.P17 was also played before the Court. The video recording was transferred to CD and the same is played in the laptop. This witness was subjected for further cross-examination wherein he says that police took him to hospital in

their jeep. The original memory card was not given to the police and he transferred the same to the CD since other videographed material was also there in the memory card. It is suggested that he did not transmit the same to Ex.P17 and the same was denied. He admits that Tahsildar has not taken his signature and not videographed the signature portion in the video.

28. The other witness is PW16 who is a doctor at District hospital. In his evidence, he says that Metagalli Police Station PSI came and requested to certify that whether the victim is able to give statement or not. Accordingly, he certifies that the victim is able to give statement. Thereafter, PSI recorded her statement and also identifies her signature on Ex.P9. This witness was subjected to cross-examination. In the cross-examination, he categorically says that at the time of recording the statement he was very much present and he has not given any statement in burn injury section. The treating doctor was there and he cannot tell who was in charge of burning ward. Before recording the statement, he examined the victim and cannot tell the pulse rate. The percentage of burn injuries were

mentioned in the case sheet and verified the case sheet prior to examining her. He denied the suggestion that the victim was in a sleeping mode. He says that face, lips and hands were burnt. However, she was in a position to speak. It is suggested that in view of her lips was burnt, she was unable to make statement and the same was denied. He admits that in Ex.P9, he had not made any endorsement that she is in a position to give statement. He also says that he has not made an endorsement that in his presence, a statement was recorded. It is suggested that while recording the statement in terms of Ex.P9, he was not present and she has not given any statement and the same was denied.

29. Having considered the documentary evidence of PM report, dying declarations and Inquest, this Court has to analyze both oral and documentary evidence available on record.

30. The law was set in motion by recording the statement of injured as per Ex.P9. Having perused Ex.P9, it discloses that injured gave the statement before the police. PW12 and doctor also signed the same, but not made an

endorsement that she was capable to make a statement. But this statement was recorded on 11.01.2015 at 09.00 p.m. and issued the FIR in terms of Ex.P10. In the statement at Ex.P9, made the statement that her maternal uncle i.e., PW5 shifted her to the hospital and she also categorically stated that if she dies, going to perform the second marriage to his husband by her mother-in-law and saying that the appellant poured the kerosene and set the fire. It is also stated that earlier panchayaths were also held when he doubted fidelity of the deceased and subjected her for assault. Having taken note of the statement of the deceased which was recorded by PW12 in the presence of the doctor shows that law was set in motion and FIR was issued and started the investigation.

31. The second aspect is that cause of death and the same is homicidal. The same was deposed before the Court by the doctor who conducted the post mortem that is PW13 and he speaks about conducting of inquest as well as conducting of post mortem and mentioned the nature of injuries found on the body and those injuries are burn injuries and cause of death is on

account of septicemia of burn injuries and given the P.M. report in terms of Ex.P11. Though it is suggested that in the case of severe burn, the injury could be caused to the extent of 60% to 65%, but no suggestion was made that if 60% to 65% of injuries were caum sed, not in a position to make any statement. But cause of death is on account of septicemia of burn injuries. When the cause of death is recorded as septicemia resulting from burn injuries, it signifies that the injured has passed away from a severe systematic infection rather than the initial physical destruction of tissue. Hence, it is clear that it is a case of homicidal.

32. The doctor also says that left hand thumb was not burnt and the same is written in the PM report and right portion of the face and stomach area was fully burnt. Hence, having considered the nature of injuries, the Trial Court also comes to the conclusion that it was not a case of suicide, it was a case of homicidal. If it is a case of suicide by pouring kerosene and setting the fire, entire body that is from top to bottom would have been burnt. Hence, we do not find any error on the part of

the Trial Court in coming to the conclusion that it was a case of homicidal.

33. Now, the case is rest upon dying declaration. A dying declaration is a highly credible piece of evidence, often sufficient for conviction without corroboration, based on the principle *nemo moriturus praesumitur mentire (a* person will not meet their maker with a lie in their mouth), and it is admissible under Section 32 of the Indian Evidence Act, it is an exception to the hearsay rule, provided, it is voluntary, truthful and made by a person of sound mind regarding the cause of her death.

34. In light of the above, let us ascertain whether the deceased who made dying declaration is free from embellishment, voluntary, truthful and she was having sound mind to make statement. The PW12 and PW16 evidence is very clear that in the presence of the doctor, statement of the injured was recorded. The injured gave the statement with regard to the motive for committing the murder and specific time also mentioned as 11.01.2015 at around 04.00 p.m. when she was alone in the house, appellant poured the kerosene and set the

fire. Immediately, PW1 and PW2 came to the spot and rescued her by extinguishing the fire. No doubt, PW1 and PW2 have turned hostile and they have not supported the case of prosecution. But their evidence is very clear that her maternal uncle PW5 and sister of the accused i.e., PW3 shifted the deceased to the hospital. But PW3 also says that she rushed to the spot having come to know about the information and found the burn injuries on the body of the deceased. No doubt, in the cross examination of PW16 though he has not made any endorsement that she was in a position to speak, but her statement was recorded in his presence. The evidence of PW16 is very clear that in his presence only statement was recorded on 11.01.2015 in terms of Ex.P9.

35. It is the case of prosecution that PW12 requested PW10 to come and record the statement of injured and accordingly PW10-Additional Tahsildar having given the memo to the doctor in terms of Ex.P6, recorded the statement of victim at 11.45 p.m. in the burn Ward. Having obtained the opinion from the doctor that she is able to give statement, the same was

recorded in the presence of the doctor and others were sent out. The deceased reiterated that on 11.01.2015 at 4.00 p.m. when she was alone, appellant set the fire saying that his mother will perform the second marriage if she dies and he ran away from the spot and also says that when she screamed, PW1 and PW2 came to the spot and also reiterates that her maternal uncle PW5 and also PW3 shifted her to hospital. The said dying declaration was recorded in terms of Ex.P7. PW10 identifies her signature and so also the inquest. In the cross-examination nothing is elicited to disbelieve the same. It is categorically says that doctor Rajesh was treating the injured. But the written opinion given by the doctor was not given to the police. PW10 categorically says that Ex.P7 is in his handwriting and he only wrote the same. No doubt, certain answers are elicited with regard to keeping the other pages empty, but on perusal of Ex.P7, it is very clear that injured put her signature on the same i.e., left thumb impression both in Ex.P7 as well as Ex.P9.

36. The other witness is PW11 who reiterated the evidence of PW10 that he certified and in his presence,

statement of injured was recorded in terms of Ex.P7. In the cross-examination, he categorically says that PW10 enquired with the doctor about her capability to give evidence and the doctor who was giving the treatment to the injured certified her capability. The very defence itself elicited that pulse rate was 90 and BP was 110/70. Hence, it is clear that pulse rate as well as BP was normal. Only suggestion was made that she was not in a position to give statement and the same was denied by the doctor stating that she was capable of giving the statement.

37. The counsel for the appellant vehemently contend that Ex.P7 and P9 were created and no such statement was given by the injured. But the fact is that incident was taken place in the evening at 04.00 p.m. and injured was immediately shifted to the hospital by PW5. Though PW3 denies that she accompanied with PW5, dying declaration is very clear that PW3 also accompanied with PW5. The doctors PW11 and PW16 evidence that in their presence only statement was recorded. It has to be noted that in the same day night, statement of injured was recorded by PW12 in the presence of PW16 and so also on

the very next day also statement was recorded by PW10 in the presence of PW11 and doctor also certifies the same and thus, there was no any delay. The fact that deceased died on 17.01.2015 and she was alive for 7 days after the incident.

38. Now, this Court has to examine that whether the dying declaration could be accepted or not. This Court taken note of evidence of P.W.12 and P.W.16 and also the evidence of P.W.10 and P.W.11, making the statement before the police as well as Tahsildar and the same is similar and there is no any difference. At the first instance, it is added that panchayath was held prior to this. But in the second dying declaration, the same has not been stated. But she has narrated how an incident was taken place and no discrepancy with regard to referring the incident how it was taken place and she was alone. The accused poured the kerosene and set the fire. Though P.W.1 and P.W.2 turned hostile, the Court has to take note of statement of the victim. Now the question before this Court is whether 161 statement of the victim can be treated as dying declaration. The victim made the statement before the Investigating Officer

P.W.12. The judgment of the Allahabad High Court in the case of **GULAB SINGH v. STATE OF UP** reported in **2003 (47) ACC 161** is clear that statements of victim under Section 161 of Cr.P.C. was found worthy to be relied on as dying declaration. The Apex Court also with regard to the statement made before the police and recorded by the police, taken note of in the judgment of **DORYODHAN v. STATE OF MAHARASHTRA** reported in **2003 (1) JIC 184**, wherein it is stated that dying declaration recorded by police in presence of other prosecution witnesses is valid. Such dying declaration is reliable and cannot be doubted on the ground that statement not produced to police, but produced before the Court directly for the first time. But it is very clear that dying declaration recorded by police in the presence of other prosecution witnesses is valid. In the case on hand, the same was recorded in the presence of doctor, who certifies the capability to make such statement in respect of both dying declarations.

39. It is also important to note that the Court has to take note of if any dying declaration is made successively. In the

case on hand, on the next day also, Tahsildar P.W.10 recorded the statement of the victim in the presence of the doctor P.W.11 and evidence of both is very clear with regard to recording of the dying declaration and nothing is elicited from the mouth of these two witnesses to disbelieve the recording of the dying declaration. It has to be noted that P.W.15, who is the videographer, videographed the dying declaration of the victim and the same is valid. Even if it is not videographed also, the Court can look into the same. The Apex Court in the case of **MUKESH v. STATE FOR NCT OF DELHI AND OTHERS** reported in **AIR 2017 SC 2161 (Three Judge Bench)** held that where there are multiple dying declarations, duty of the Court is that each dying declaration should be considered independently on its own merits. One cannot be rejected because of contents of other in cases where there is more than one dying declarations. It is the duty of the Court to consider each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs. But in the case on hand, both are consistent and even Tahsildar recorded the dying declaration in his own handwriting and no doubt,

certain answers are elicited regarding keeping the other pages blank and the same cannot take away the case of the prosecution with regard to the dying declaration. The Apex Court in its judgment in the case of **Mukesh** (supra) held that where there are more than one statements in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. Having perused both Exs.P.7 and 9, dying declaration made before the police in the presence of the doctor P.W.16 as well as made before the Executive Magistrate, who has been examined as P.W.10, that too in the presence of P.W.11 doctor, both are trustworthy and the same are reliable and hence, the relying upon Exs.P.7 and 9 dying declaration and the contention that the same are created cannot be accepted. The man may lie, but the circumstances will not lie and also to take note of dying declaration was recorded on 11.01.2015 and also on 12.01.2015 and she died on 17.01.2015 and there was a gap of 7 days and cause of death is also an account of septicemia. Though it is a burn of 60% to

65%, but both doctor P.W.11 and P.W.16 deposed that she was competent enough to make the dying declaration.

40. No doubt, it is contended that the Tahsildar admitted that he has not stated that he called the photographer. But the evidence of photographer P.W.15 is clear that he was there throughout. Only he was not there at the time of taking the signature. P.W.16 also admits that he has not endorsed that in his presence the same was recorded. But categorical evidence was given that even though not endorsed, he was very much present. The evidence of P.W.11 is also clear that on the next day, statement was recorded in the presence of the doctor. The other contention is that the dying declaration is in format i.e., Ex.P.7. But it is settled law and law also evolved that the same need not be in question and answer form and even the dying declaration can be made not only in the presence of Executive Magistrate and even in the presence of common man also could be made. It is also not seriously disputed that no dying declaration was recorded and both dying declarations are similar and the Court taken note of the material on record and post

mortem report also supports the case of the prosecution that it was a burn injury and she succumbed to the said injuries. Taking into account the dying declaration, this dying declaration alone can be relied upon for convicting the accused, if it is trustworthy and reliable. The Trial Court having taken note of all these materials available on record, properly appreciated the same and hence, we do not find any error on the part of the Trial Court in appreciating the evidence. Having taken note of evidence of P.W.5, evidence of PWs.10, 11, 13, 15 and 16, the case of the prosecution is corroborated and nothing is there to disbelieve Exs.P.7 and 9 dying declarations.

41. Having considered the dying declarations at Ex.P7 and P9, it is mentioned with regard to the act of the appellant only on the particular date of incident. To invoke Section 498A of IPC against the appellant, no material is placed before the Court except stating that accused No.2 was instigating her son/appellant to harass his wife/deceased physically and mentally. But the Trial Court extended the benefit of doubt in respect of accused No.2. The appellant and the victim have lived

happily for a period of four years. But the specific allegation against the appellant is that he was suspecting fidelity of the victim and committed the act of pouring kerosene and set the fire, but there is no incident of subjecting the victim for mental and physical cruelty from the date of their marriage and there is no evidence from the witnesses in this regard. Once the Trial Court given the benefit of doubt in favour of accused No.2, particularly with regard to the offence punishable under Section 498A of IPC and acquitted accused No.2, similar view would have been taken in respect of the appellant also. In the absence of any evidence before the Court with regard to subjecting the victim for physical and mental harassment, the Trial Court ought not to have invoked Section 498A of IPC against the appellant. Hence, we do not find any material before the Court to invoke Section 498A of IPC against the appellant. The records discloses that in the investigation, it is mainly focused with regard to the particular date of incident, recording of statement and relied upon the documents at Ex.P7 and P9 dying declarations. Hence, it is a case to interfere with the finding of the Trial Court to set aside the judgment of conviction for the offence punishable

under Section 498A of IPC. Hence, we answer the point accordingly.

Point No.2:

42. In view of the discussions made above, we pass the following:

ORDER

The appeal is allowed in part.

The judgment of conviction and sentence dated 11.04.2018 and 13.04.2018 passed in S.C.No.185/2015 against the appellant/accused No.1 is modified by acquitting the appellant for the offence punishable under Section 498A of IPC. The judgment of conviction and sentence for the offence punishable under Section 302 of IPC is confirmed.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

SN/MD