

KASHI VISHWANATH

v.

STATE OF KARNATAKA

(Criminal Appeal No. 175 of 2007)

JULY 3, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI  
MUKHOPADHAYA, JJ.]

*Penal Code, 1860 - ss. 498A and 302 r/w s.34 - Married woman died due to burn injuries - Deceased gave three dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29) - Three accused viz. the deceased's husband, his mother and another woman ('L') with whom the deceased's husband allegedly had illicit relations - Trial court convicted appellant-husband and 'L' u/ ss.498A and 302 r/w 34 - High Court confirmed the conviction of appellant-husband but acquitted 'L' - Held: Comparison of the three dying declarations show glaring contradictions - In the first dying declaration (Ex.P.12) the deceased stated that her husband instigated her to pour kerosene on her body, therefore, she poured the kerosene on her body and her husband further poured kerosene on her and put on fire using a match box - In the second dying declaration (Ex.P.22), the deceased stated that her husband alongwith 'L' poured kerosene on her body and put on fire by using match stick - In the third dying declaration (Ex.P.29), the deceased stated that her husband poured kerosene on her and 'L' lit the match stick and thrown upon her body - Apart from the contradictions, credibility of the three dying declarations also doubtful - In the first dying declaration (Ex.P.12), thumb impression of victim has been shown whereas in the second dying declaration (Ex.P.22) given on the same day and the third dying declaration (Ex.P.29) given on the next day, the victim stated that she had not given her signatures since her hand was completely burnt - Prosecution also failed to state as to why*

A *the three dying declarations were recorded in Kannada, if the deceased was talking in Telugu - Not clear as to who amongst the Tehisldar, PSI or SI or the Doctors who signed in Ex.P.12, Ex.P.22 and Ex.P.29 had knowledge of Telugu and translated the same in Kannada for writing dying declarations in those*  
 B *exhibits -Doubt as to truthfulness of the contents of the dying declarations as possibility of the deceased being influenced by somebody in making the dying declarations not ruled out - Prosecution did not establish its case beyond reasonable doubt - Hence, conviction of appellatant set aside.*

C **The wife of appellatant died due to burn injuries. The deceased gave three dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29). The case of the prosecution was that the appellatant had illicit intimacy with another lady 'L' on account of which he ill-treated and harassed his wife.**  
 D **There were in all three accused - the appellatant, his mother and 'L'. While PW-10, Tahsildar recorded dying declaration Ex.P.12, the second dying declaration Ex.P.22 was recorded by PW23, the PSI. The said two dying declarations were recorded on the date of the incident.**  
 E **The third dying declaration - Ex.P.29 was recorded by the Police the next day in the presence of PW-25. The trial court convicted the appellatant and 'L' under Sections 498-A and 302 read with 34 IPC. The High Court confirmed the conviction of the appellatant but acquitted 'L'.**

F **In the instant appeal, the appellatant contended that the prosecution absolutely failed to establish any of the charges, much less, the charge under Section 302 IPC in view of the multiple dying declarations brought on record which were contrary to each other. The appellatant also**  
 G **raised doubt relating to contents of Ex.P.12, Ex.P.22 and Ex.P.29, the three dying declarations which were originally recorded in Kannada contending that the deceased had no knowledge of Kannada language and could speak only Telugu.**  
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Allowing the appeal, the Court

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**HELD: 1. A comparison of the three dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29) shows certain glaring contradictions. In the first dying declaration (Ex.P.12), she (deceased) stated that her husband instigated her to pour kerosene on her body, therefore, she poured the kerosene on her body and her husband further poured kerosene on her and put on fire using a match box. In the second dying declaration (Ex.P.22), she (deceased) stated that her husband along with 'L' poured kerosene on her body and put on fire by using match stick. In the third dying declaration (Ex.P.29), she (deceased) stated that her husband poured kerosene on her and 'L' lit the match stick and thrown upon her body. [Paras 23, 24] [642-H; 643-A, F-G]**

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**2. Apart from the contradictions, the credibility of three dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29) is to be doubted. In the first dying declaration (Ex.P.12) dated 14th January, 2000 the thumb impression of victim has been shown. Whereas in the second dying declaration (Ex.P.22) taken on the same day, i.e, 14th January, 2000 and the third dying declaration (Ex.P.29) given on the next day, i.e., 15th January, 2000, the victim had stated that she had not given her signatures since her hand was completely burnt. PW-22(Dr.), who signed the Ex.P.22, in his cross-examination stated that he was not aware whether deceased was talking in Telugu. PW-20 (Dr.), who signed Ex.P.12, in his cross-examination specifically stated that he can understand Kannada but does not know Telugu language and that deceased was talking in Telugu language. PW-8, mother of the deceased, in her cross-examination stated that deceased was not knowing the correct writing in Telugu. But she was writing some Telugu. [Para 25] [643-H; 644-A-D]**

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A 3. The prosecution has failed to state as to why three  
dying declarations were recorded in Kannada, if the  
deceased was talking in Telugu. It has also not made clear  
as to who amongst the Tehisldar, PSI or SI or the Doctors  
who has signed in Ex.P.12, Ex.P.22 and Ex.P.29 had  
B knowledge of Telugu and translated the same in Kannada  
for writing dying declarations in those exhibits and that  
in the bottom of three dying declarations it has not been  
mentioned that they were read over in Kannada and  
C explained in Telugu that the deceased understood the  
contents of the same. The above mentioned facts create  
doubt as to the truthfulness of the contents of the dying  
declarations as the possibility of she being influenced by  
somebody in making the dying declarations cannot be  
ruled out. [Para 26] [644-E-G]

D 4. It cannot be said that the prosecution in this case  
has established its case beyond reasonable doubt to  
base a conviction on the appellant. Hence, both the  
courts below have erred in coming to the contra  
E conclusion. [Para 27] [644-H; 645-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 175 of 2007.

F From the Judgment & Order dated 27.07.2004 of the High  
Court of Karnataka at Bangalore in Criminal Appeal No. 347  
of 2001.

Sakesh Kumar (A.C.) for the Appellant.

G K. Parameshwar, V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

H SUDHANSU JYOTI MUKHOPADHAYA, J. 1. The  
appellant, who is accused No.1, by this appeal has challenged  
the judgment dated 27th July, 2004 in Criminal Appeal No.347

of 2001 passed by the Division Bench of the High Court of Karnataka at Bangalore whereby the High Court affirmed the conviction and sentenced imposed by the trial court under Section 498-A and 302 read with 34 IPC. So far as accused No.2 is concerned, the High Court acquitted her of all the charges levelled against her.

2. The appellant along with other accused faced charges punishable under Section 498-A and 302 read with 34 IPC. The First Additional Sessions judge, Dharwad, sitting at Hubli by his judgment dated 1st February, 2001 in Sessions Case No.119 of 2000, acquitted accused No.2 under Section 235(1) Cr.P.C. of the offences under Sections 498-A and 302 IPC but convicted accused Nos.1 and 3 under Section 235(2) Cr.P.C. for the offences under Sections 498-A and 302 read with Section 34 IPC. They were sentenced to undergo rigorous imprisonment for one year by each and to pay fine of Rs.1,000/- by each, in default to undergo further rigorous imprisonment for one month, for offence under Section 498-A IPC. They were sentenced to undergo life imprisonment and to pay fine of Rs.2,000/- by each, in default, to undergo rigorous imprisonment for three months by each for the offence under Section 302 IPC.

In appeal, the High Court by its judgment dated 27th July, 2004 allowed the appeal in part. The judgment of conviction and sentence passed by the Sessions Judge as against accused No.1 (first appellant before the High Court) for the offence under Section 498-A and 302 read with 34 IPC was confirmed giving rise to this appeal and as against accused No.2 (second appellant before the High Court), she was acquitted of all the charges levelled against her.

3. The case of the prosecution, in brief, as unfurled before the trial court is as follows:

The deceased, Neelamma (alias Leelamma) got married

A to the appellant herein 13 years prior to the incident. The date of the incident is 14th January, 2000. Out of the wedlock, they have two sons and a daughter and they were all living at Mantur Road, Ambedkar Colony, Hubli. According to the prosecution, the relationship between the husband and wife was cordial till

B two years prior to the incident. The disruptions started in the family on account of the appellant developing intimacy with one Lakshmi, who was accused No.3 and was the second appellant before the High Court. In this regard, in spite of intervention of the family members of the parental house of the deceased and

C persistent resistance of the deceased, the said affair of intimacy continued. There used to be bickering and quarrels between the husband and wife in this regard. Though accused No.2, the mother of the appellant was living with them, she never tried to patch up the differences between the husband and wife.

D Ultimately, on 14th January, 2000, at about 10.00 a.m. in the matrimonial home of the deceased, accused Nos.1 and 3 doused deceased Neelamma and set her ablaze while accused No.2 was watching outside. On the same day in the afternoon, she was shifted to K.M.C. Hospital, Hubli and on

E admission, the Hospital authorities intimated the police who came into picture at about 9.30-10.00 p.m. in the night. Prior to that, the Taluka Executive Magistrate, PW-10, recorded her statement as per Ex.P.12. One more statement, Ex.P.22 –

F dying declaration, came to be recorded by Rayappa, Police Sub Inspector (PW-23), in the form of complaint in the presence of Dr. Bhimappa (PW-22) and during the course of treatment, deceased Neelamma succumbed to burns on 18th January, 2000 at about 6.15 p.m. On 15th January, 2000, at about 5.30 p.m., Ashok (PW-24), the Investigation Officer recorded the

G dying declaration Ex.P.29 in the presence of Dr. Komal Prasad (PW-25). On the basis of Ex.P.22, investigation of the case commenced as against accused No.1 to 3. The kith and kin of the deceased are examined as Pullayya (PW.5) - maternal uncle; Eliya (PW-6) – father; Grasamma (PW-7) – maternal aunt; Padmavathi (PW-8) – mother and Prabhudas (PW-9) –

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uncle of the deceased. The purpose of examining these witnesses was to establish harassment, motive and oral dying declaration implicating accused Nos.1 to 3. The independent witnesses, who were the neighbours of the appellant i.e. Mansuresh (PW-11), Savakka (PW-13), Kanechanamma(PW-14), (M. Saloman)PW-15 and Perumal (PW-16) were also examined. Unfortunately, none of them have supported the case of the prosecution.

4. Ex.P.1, is the spot mahazar drawn in the kitchen of the matrimonial home of the deceased where burnt clothes, burnt gunny bag, match box, match stick, a kerosene stove, kerosene can were found. PW-2 and PW-3 were examined to support the contents of Ex.P.2 to Ex.P.6 – mahazars seizing caste certificate and marriage certificate revealing the relationship and the case of the deceased and accused Nos.1 and 2. Ex.P.3 is the recovery of bed sheet alleged to have been used by accused No.2 to extinguish the fire. Letters i.e. Ex.P8 & Ex.P9 alleged to have been written by the appellant to the wife and parents in law, Ex.P.5 is the seizure mahazar of letters (Exs.P.10 to P.11) alleged to have been written by the deceased to her parents aunt and uncle and lastly Ex.P.6 is mahazar seizure of photographs of the deceased revealing the burns. Peshalal (PW.4) was examined to speak the inquest over the dead body as per Ex.P.7 but turned hostile. Prabhakar (PW.21) was also turned hostile. Dr. Radha (PW.17) was the Doctor at the casualty ward in K.M.C. Hospital who entered the details in M.L.C. register and the relevant document is at Ex.P.18. Dr. Jagadish (PW-18), conducted autopsy on the dead body and issued Ex.P.19, the postmortem report opining that the death of the deceased Neelamma was due to septicemia as a result of burns. Ex.P.20 is the sketch drawn by PW-19. Dr. Bhimappa (PW-22) is the Head of Department of the Burns Ward in whose presence Rayappa (PW-23), PSI, Bendigeri P.S., Hubli recorded the complaint as per Ex.P.22 on 14th January, 2000 and sent FIR to the Court.

A 5. As noticed above, the learned Sessions Court based on the oral and documentary evidence held accused No.1 and 3 guilty of the offence punishable under Section 498-A and 302 read with 34 IPC. Accused No.2 mother-in-law of the deceased was acquitted of all the charges levelled against her.

B 6. Learned counsel for the appellant contended that the prosecution absolutely failed to establish any of the charges, much less, the charge under Section 302 IPC in view of four dying declarations brought on record which are contrary to each other. It was further contended that the oral declarations made before the kith and kin of the deceased are not at all important or relevant in the light of the four dying declarations. According to the learned counsel, the contents of Ex.P.18, Ex.P.12, Ex.P.22 and Ex.P.29, if looked into carefully, would indicate the purpose of so many dying declarations coming into existence i.e. only to ensure that all the accused are somehow roped in. Learned counsel for the appellant placed reliance on the decisions of this Court in *Mehiboobsab Abbasabi Nadaf vs. State of Karnataka*, (2007) 13 SCC 112, etc. which will be referred to in this judgment at the appropriate stage.

E 7. In reply, learned counsel for the State submitted that Ex.P.18 was not a dying declaration but the entries in the M.L.C. Register made immediately on the admission of the patient to the Hospital. Ex.P.12 was the actual dying declaration recorded by the Taluka Executive Magistrate (PW-10). Ex.P.22 was a complaint recorded by Rayappa, PSI (PW-23), in the presence of Dr. Bhimappa (PW.22) and further investigation was taken up. Therefore, the contents of Ex.P.12, according to the counsel for the State have to be taken into consideration which is the earliest dying declaration. He further contended that Ex.P.29 is more reliable because after treatment for almost a day, when the patient was physically and mentally fit, the same came to be recorded.

H 8. Learned counsel appearing on behalf of the appellant

also raised doubt relating to contents of Ex.P.12, Ex.P.22 and Ex.P.29, the three dying declarations which were originally recorded in Kannada. According to the learned counsel for the appellant, the deceased had no knowledge of Kannada language and could speak only Telugu. A

9. We have heard the learned counsel for the parties at length and gone through the entire material placed before us. B

10. The kith and kin of the deceased who examined are: as Pullayya (PW.5) - maternal uncle, Eliya (PW-6) – father, Gracemma (PW-7) – maternal aunt, Padmavathi (PW-8) – mother and Prabhudas (PW-9) – uncle of the deceased. Their deposition corroborates the case of the prosecution that one or two years prior to the death of the deceased, everything seemed to be cordial between the husband and wife (deceased). After the appellant joined the Railway services on compassionate ground after the death of his father, the bickering and quarrel commenced because of developing intimacy with a co-worker by name Lakshmi who was the third accused. Ex.P.8 to P.11 are inland letters produced by the uncle and father of the deceased, PW-5 and PW-6 and the letters pertaining to the year 1995 written by the deceased which say that except some harassment and ill-treatment, there was no serious harassment to the deceased at the hands of her husband and mother-in-law of the deceased. The letter written in the year 1999 only would indicate that on account of the appellant developing intimacy with Lakshmi, he ill-treated and harassed her to the maximum extent possible. Accused No.2, mother-in-law was only a spectator. This was her complaint or depression recorded in her letters written to the kith and kin. C D E F

11. When we look into the statement of independent witnesses produced by the prosecution, who are neighbours of the appellant i.e. Mansuresh (PW-11), Savakka (PW-13), Kanechanamma(PW-14), (M. Saloman)PW-15 and Perumal G

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A (PW-16), we find that none of them have supported the case of the prosecution.

B 12. In this case, we have noted that there is no eye-witness to the incident in question. The prosecution primary relies on three dying declarations Ex.P.12, Ex.P.22 and Ex.P.29. In support of those Exhibits the prosecution relied on the statements of Tahsildar, Hubli (PW-10), Dhanjaya Kumar, PG student (PW-20) present at the time of arrival of Maharudrappa, Tahasildar (PW-10) to the Burns Ward. Dr. Radha (PW-17) who examined the deceased, Dr. Jagdish (PW-18), who was working as Medical Officer on 14th January, 2000 and conducted the postmortem, Dr. Bhimappa (PW-22), in whose presence Ex.P.22 was recorded, Rayappa (PW-23), PSI, Bendigeri Police Station, Crime Branch, Hubli who recorded the dying declaration (Ex.P.22) and registered the case, Dr. Komal Prasad (PW-25), in whose presence Ex.P.29 was recorded, etc.

E In *Mehiboobsab Abbasabi Nadaf vs. State of Karnataka*, (2007) 13 SCC 112, having noticed multiple dying declarations this Court held:

F *“7. Conviction can indisputably be based on a dying declaration. But before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.”*

G 13. We will now examine the contents of three different dying declarations i.e. Ex.P.12, Ex.P.22 and Ex.P.29 and the related prosecution witnesses who deposed in support of such dying declarations.

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Maharudrappa (PW-10), Tahasildar, Hubli recorded dying declaration Ex.P.12, at 8.30 p.m. on 14th January, 2000 in Ward No.202, The deceased stated that she was conscious to give answer the questions. She got married with the appellant at the age of 26 years, about 13 years back. She had two sons and one daughter. She was a housewife and her husband was working in Railways and used to come home once in a week. She was staying at Mantur Road, Ganesh Pet, Hubli. She stated that she had been brought at KMC Hospital, Hubli by her mother-in-law, Smt. Polamma by auto rickshaw, after she being sustained burn injuries at about 8.30 a.m. in her residence. At about 12 p.m. she had been admitted there for treatment by her mother-in-law. Her husband had not come to see her after the incident. Her mother-in-law was accompanying her in the Hospital. She further stated that her husband (appellant herein) had illicit relations with one Lakshmi. Every week he used to come home and for one or the other reason, used to fight and beat her ruthlessly. Her mother-in-law used to keep quiet without objecting for such acts of her son. It is stated in Ex.P.12 on the said date (14th January, 2000) at about 8.30 a.m., when her children had gone out of the residence, her husband had a fight with her and instigated her to pour kerosene upon her body. She poured the kerosene on her body and her husband further poured kerosene upon her and put on fire with match box. At that time her mother-in-law was out of the residence. When the flame was catching her sari and burning her body, her husband has not tried to douse the fire. Neighbouring people rushed to her residence on hearing her screams and doused the fire by pouring water. Thereafter, her mother-in-law had brought her to the Hospital by auto and admitted for treatment. Both her husband and Lakshmi are responsible for her condition. In the bottom of the Ex.P.12 where thumb impression of the victim is taken it is written "read over and accepted to be correct".

14. The Tahasildar (PW-10) in his statement stated that

A while he was working as Tahasildar in Hubli, on 14th January, 2000 at 7.25 p.m., he received a requisition from Town Police Station, Hubli, to record dying declaration of Neelamma wife of Kashi Vishwanath Murari. He had recorded the dying declaration of the said Neelamma on 14th January, 2000 from  
 B 8.30 p.m. to 9.00 p.m. Doctor opined that she was in condition to give dying declaration. He put the questions to Neelamma and she answered. After recording it, it was read over to her. Admitting its contentions she put her thumb impression on it and Doctor also signed. Dying declaration is marked at  
 C Ex.P.12, and the signatures of witness is marked at Ex.P.12(a).

15. Dr. Dhanjaya Kumar (PW-20), who was working as P.G. student in K.M.C. Hubli stated that on 14th January, 2000 at about 8.30 p.m. Tahasildar, Hubli came to K.M.C. Ward  
 D No.202. He was on duty there. The Tahasildar asked him about the patient's condition. He examined the patient and she was fit to give statement. The Tahasildar recorded the statement of the injured and he examined again and found her alright. He was present when Tahasildar recorded the statement of the  
 E injured. He had also signed on that statement. The signatures of the witness are marked at Ex.P.12(b) and the certificate of the witness is marked at Ex.P.12(c). In the cross-examination he stated that Dr. A.S. Beganalkar, Unit Chief did not give anything in writing asking him to be present and examine the  
 F injured lady. The Tahasildar, Hubli did not give requisition in writing with a request to be present there and examine that injured lady. He has not given in writing separately about the fitness condition of injured Neelamma. From 8.00 a.m. he was on duty in Ward No.202 of K.M.C. on 14th January, 2000. He  
 G had not given treatment to Neelamma but his colleague had given treatment. On Ex.P.12, it is not specifically written that Neelamma was examined twice. **He specifically, stated that he can understand Kannada language. He does not know Telugu language. Neelamma was talking in Telugu**

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language. He further stated that it is incorrect to suggest that at that time Neelamma was not in fit condition. A

16. The second dying declaration is Ex.P.22 recorded by the PSI, Bendigeri P.S., Hubli at 9.45 p.m. on 14th January, 2000. In the said dying declaration, the deceased disclosed her name and address as Neelamma @ Lilamma w/o Kashi Vishwanath of Mantoor Road, Ambedkar Colony, Hubli. She along with her husband-Kashi Vishwanath, mother-in-law-Polamma, and her children-Sandya, Prasanna and Naveen were staying at home. Her husband had illicit and immoral relation with one Laxmi, who has been working as sweeper in Railways. Her husband and mother-in-law used to quarrel with her and on 14th January, 2000 at about 10.00 a.m. her husband started quarreling with her at the behest of Laxmi and along with Laxmi poured Kerosene on her body and put on fire by using match stick. She further stated that she could not put her signatures since her hand was completely burnt. In the bottom of it, it was mentioned that dying declaration was "read over and accepted to be correct" B C D

17. Rayappa, PW.23, PSI, Bendigeri, P.S. Hubli who recorded dying declaration Ex.P.22 stated that while he was working as PSI, Bendigeri Crime Branch on 14th January, 2000 as the Police Inspector gave an order and directed me to go to K.M.C. and record statement of Neelamma. He went to KMC Hubli at 9.45 p.m. and gave the order to the Doctor. Doctor opined that she was in condition to give statement. He recorded the statement of Neelamma in the presence of Doctor. The statement is Ex.P.22. He has signed on it and Doctor has also signed on Ex.P.22. E F

18. Dr. Bhimappa (PW.22), Medical Officer, District Hospital Bagalkot stated that on 14th January, 2000 he was Medical Officer in K.M.C., Hubli. On 14th January, 2000 he was on duty in K.M.C. Bendigeri Police recorded the statement of injured. The statement is marked at Ex.P.22. It bears his G H

A signatures at Ex.22(a). The injured was in a position to give statement. Ex.P.22 was recorded in his presence. In cross-examination he accepted that the Police Officer of Bendigeri P.S. had not given any requisition in writing requesting him to be present while recording such statements. He further  
 B accepted that on Ex.P.22 he had not endorsed that Neelamma was in fit condition to give statement. **He further stated that he was not aware whether Neelamma was talking in Telugu.**

C 19. Padmavathi (PW-8), coolie by occupation, is the mother of Neelamma. She stated that after marriage of the appellant and her daughter, Neelamma, their relationship was good, later appellant used to complain that Neelamma had not brought any dowry. Neelamma was complaining that she was  
 D ill treated and harassed by the appellant and he was intending to marry another woman. They convened a Panchayat and advised the appellant. Even after advice harassment was continued. Her daughter was beaten 2-3 times, and she left her matrimonial home and resided with her mother. The appellant took her back to his house. The appellant was suspecting her  
 E daughter. She stated that Pullayya had phoned her about the incident. She along with her husband, son-in-law came to Hubli. When they went to K.M.C. Neelamma was talking properly, when they asked Neelamma she told that accused  
 F No.1(appellant) to 3 closed the door of the house, accused No.3 poured kerosene and accused No.1 set her on fire. Accused No.2, mother-in-law was outside the house, closing the door. During her cross-examination, **PW-8, specifically stated that Neelamma did not know correct writing in Telugu but she used to write some Telugu. She had some written letters which have been given to the police. She does not know that those letters were written by Neelamma or not.**

20. The contents of the third dying declaration – Ex.P.29 was recorded by the Bendigeri Police on 15th January, 2000  
 H in the presence of Dr. Komal Prasad (PW-25), a P.G. student

in KMC, Hubli. In the said dying declaration (Ex.P.29), A  
deceased Neelamma stated that she had been residing at the  
above-mentioned address, i.e., Mantur Road, Ambedkar  
Colony, Hubli along with her husband, mother-in-law, Polamma,  
and three children. She was a house wife. Her husband B  
Vishwanath was working in SNI Division, Railways at present  
employed at Karat. Often he visited the house. Two days prior  
i.e. Thursday, 13th January, 2000, she was confronted and  
slapped on the right cheek by one Laxmi of Mantur Road,  
Hanchandra Colony, who had illicit relation with her husband.  
She returned to her house having decided to inform about the C  
incident to her husband. She had informed her husband about  
the incident when he came to house at 7.30 p.m. on the same  
day. Then he had scolded, thrashed her by saying that why you  
had spoken to Laxmi. She kept quiet. Next morning i.e. D  
Friday, 14th January, 2000 while she was cleaning the  
utensils, her husband came along with Laxmi, and  
thrashed her by saying that what can she do if he kept  
Laxmi in the said house. Then he dragged her inside the  
house and closed the door. Her mother-in-law also  
supported her husband and went outside. At that time E  
Laxmi was inside the house. Her husband poured  
kerosene on her and Laxmi lit the match stick and thrown  
on her body, due to the flames, fire spread all over her  
body, she rushed outside the house screaming for help.  
Then neighbours and workers who were at site came and F  
doused the fire by wrapping her body with blanket. After  
being scolded by the neighbours her mother-in-law had  
taken her to KMC Hospital by auto. The incident took  
place at around 10.00 a.m. She further stated that she had  
been harassed and tormented quite often by her G  
husband and mother-in-law since one year and Laxmi  
was responsible for the said incident. She further stated  
that she could not put her signatures since her hand was  
burnt. Her children had been to school at the time of the  
incident. Below the dying declaration it was written that H

A **the same was “read over & accepted to be correct”.**

B 21. Dr. Komal Prasad (PW-25), in his statement stated that on 15th January, 2000 he was on duty in K.M.C. Hubli. Bendigeri Police Officer had come to KMC on 15th January, 2000 and asked his opinion about the fit condition of one Neelamma injured to give statement. He examined her, and stated that she was in fit condition to give statement. Police Officer recorded her statement in his presence and he had also signed on that statement. The statement is Ex.P.29. The signature of witness is marked at Ex.P.29(a). The statement was recorded at 5.25 p.m. In his cross-examination, he stated that Neelamma had sustained burn injuries nearly 90 to 95 per cent. She was admitted on previous day and it was 1 ½ day when he gave his opinion. She was given with sedative injunction.

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E 22. Dr. Radha (PW.17), Assistant Surgeon, KMC, Hubli, in her deposition stated that she was working as Medical Officer in KMC, Hubli. On 14th January, 2000 at 11.45 a.m., **she examined one Neelamma wife of Kashi Vishwanath Murari, who had sustained burn injuries. The history is self afflicted burns due to a quarrel at home at 11 a.m. with her husband. Patient was conscious.** On examination she noticed superficial deep burns over the lower part of face, lower half of chest and abdomen. Both the upper limbs and both the lower limbs were also burnt, sparing the face, neck, upper part of chest, parts of back in patches, groin and soles of the feet. She had sustained burn injuries from 70 to 75 per cent. Eye brows and hair of Neelamma were singed. She was admitted to female surgical ward. The patient was brought by her mother-in-law namely Polamma Venkatayya. In her cross-examination, she stated that such burn injuries are possible if fire catches to the lower end of saree of a woman.

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H 23. We have noticed the three dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29). A comparison of the three dying

declarations, in our opinion, shows certain glaring contradictions. In the first dying declaration (Ex.P.12), we have noticed that deceased, Neelamma stated that she sustained burn injuries in the early morning at 8.30 a.m., when her children had gone out of the residence, her husband had a fight with her and instigated her to pour kerosene upon her body. She poured the kerosene on her body and her husband had also further poured kerosene upon her and put on fire match box. While in the second dying declaration (Ex.P.22), Neelamma (deceased) stated that her husband and mother-in-law used to quarrel with her and on 14th January, 2000 at about 10.00 a.m. her husband had started fight with her at the behest of Laxmi and along with Laxmi poured kerosene on her body and put on fire by using match stick. In the third dying declaration (Ex.P.29), Neelamma (deceased) stated that next morning i.e. Friday, 14th January, 2000 while she was cleaning the utensils, her husband came along with Laxmi, and thrashed her by saying that what can you do if he kept Laxmi in the said house. Then he dragged her inside the house and closed the door, her mother-in-law also supported her husband went outside. At that time Laxmi was inside the house. Her husband poured kerosene on her and Laxmi lit the match stick and thrown upon her body, due to the flames, fire spread all over her body, she rushed outside the house screaming for help.

24. In the first dying declaration (Ex.P.12), she (deceased) stated that her husband instigated her to pour kerosene on her body, therefore, she poured the kerosene on her body and her husband further poured kerosene on her and put on fire using a match box. In the second dying declaration (Ex.P.22), she (deceased) stated that her husband along with Laxmi poured kerosene on her body and put on fire by using match stick. In the third dying declaration (Ex.P.29), she (deceased) stated that her husband poured kerosene on her and Laxmi lit the match stick and thrown upon her body.

25. Apart from the contradictions, the credibility of three

A dying declarations (Ex.P.12, Ex.P.22 and Ex.P.29) is to be doubted. In the first dying declaration (Ex.P.12) dated 14th January, 2000 the thumb impression of victim has been shown. Whereas in the second dying declaration (Ex.P.22) taken on the same day, i.e., 14th January, 2000 and the third dying  
 B declaration (Ex.P.29) given on the next day, i.e., 15th January, 2000, the victim had stated that she had not given her signatures since her hand was completely burnt. Dr. Bhimappa (PW-22), who signed the Ex.P.22, in his cross-examination stated that he was not aware whether Neelamma (deceased)  
 C was talking in Telugu. Dr. Dhanjaya Kumar (PW-20), who signed Ex.P.12, in his cross-examination specifically stated that he can understand Kannada but does not know Telugu language and that Neelamma was talking in Telugu language. Padmavathi (PW-8), mother of the deceased, in her cross-  
 D examination stated that Neelamma (deceased) was not knowing the correct writing the Telugu. But she was writing some Telugu.

E 26. The prosecution has failed to state as to why three dying declarations were recorded in Kannada, if the deceased, Neelamma was talking in Telugu. It has also not made clear as to who amongst the Tehisldar, PSI or SI or the Doctors who has signed in Ex.P.12, Ex.P.22 and Ex.P.29 had knowledge of Telugu and translated the same in Kannada for writing dying  
 F declarations in those exhibits and that in the bottom of three dying declarations it has not been mentioned that they were read over in Kannada and explained in Telugu that the deceased understood the contents of the same. The above mentioned facts create doubt in our mind as to the truthfulness  
 G of the contents of the dying declarations as the possibility of she being influenced by somebody in making the dying declarations cannot be ruled out.

H 27. On careful perusal of the materials on record, we are unable to come to the conclusion that the prosecution in this

case has established its case beyond reasonable doubt to base a conviction on the appellant. Hence, we are of the opinion that both the courts below have erred in coming to the contra conclusion. A

28. For the reasons stated above, this appeal succeeds and the judgment and conviction recorded by the courts below are set aside. The appeal is allowed. The appellant, who is in jail, is directed to be released forthwith. B

B.B.B.

Appeal allowed.