REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 758 OF 2010

Jayamma & Anr..... Appellant(s)

VERSUS

State of Karnataka .....Respondent

WITH

CRIMINAL APPEAL No. 573 of 2016

Lachma s/o Chandyanaika & Anr..... Appellant(s)

VERSUS

State of Karnataka ..... Respondent

JUDGMENT

Surya Kant, J:

These Criminal Appeals, which have been heard through video conferencing, are directed against the common judgment dated

29.07.2008 passed by the High Court of Karnataka at Bangalore whereby the findings of the trial Court were reversed and after setting aside the appellants' acquittal, they have been convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("IPC") and consequently sentenced to life imprisonment.

FACTS

2. The parties in the present case are closely related. The case of the prosecution is that there was a long-standing animosity between the families of Jayamma wife of Reddinaika (Appellant No.1) and Jayamma wife of Sanna Ramanaika (deceased) and in connection thereto, a quarrel took place on 10.09.1998 in which, Thippeswamynaika son of the deceased assaulted and injured Reddinaika (Husband of Appellant No.1). Thereafter the appellants allegedly went to the house of the deceased on 21.09.1998 and confronted her about the assault on Reddinaika. The appellants demanded Rs. 4,000/- for the cost incurred on the medical treatment of Reddinaika. After a heated exchange of words, the appellants allegedly doused the deceased-Jayamma in kerosene and set her on fire. Specific roles have been attributed to all the appellants in

respect thereto. Upon hearing the wails of Jayamma, her other son Ravi Kumar (PW-2) and daughter-in-law Saroja Bai (PW-5; wife of Thippeshi or Thippeswamynaika) came to the spot and tried to extinguish the fire. The appellants meanwhile ran away from the spot. Since Jayamma was seriously injured, PW-2 sought help from Kumaranaika (PW-3) to shift Jayamma to the hospital. PW-2 and PW-3 then took the injured-Jayamma on a bullock cart to Primary Health Centre (P.H.C.), Thalak and there Dr. A. Thippeswamy (PW-16) provided primary treatment to the injured-Jayamma, including, administering her certain pain killers. Dr. A. Thippeswamy (PW-16) sent medico-legal case information to the Thalak Police Station, and on receipt thereof, SHO K.V. Mallikarjunappa (PW-11) reached the hospital and recorded the statement of the injured Jayamma (Ex. P-

5) in the presence of PW-16. Jayamma in her statement implicated all the appellants. On the basis of the said statement, Crime No. 101 of 1998 was registered at the Thalak Police Station under Sections 504, 307, 114 read with Section 34 of IPC. Owing to the seriousness of injuries, the victim was later shifted to Government Hospital, Chitradurga. However, on 23.09.1998 at 5:30 AM, Jayamma succumbed to her injuries.

3. Upon being notified about the death of Jayamma, the Police sent a requisition to the Court, requesting that offence under Section

307 read with Section 34 IPC be altered to offence under Section 302 read with Section 34 IPC. ASI J. Sanjeeva Murthy (PW-14) thereupon visited the Hospital and conducted the inquest. The body was sent for post mortem examination and a report was made by Dr. Sunil Chowhan (PW-19), wherein, it was opined that Jayamma died of shock due to extensive burn injuries. Thereafter, the police visited the spot, drew the *mahazar* and made certain seizures in the presence of Rameshnaika (PW-1) and Eshwarnaika (PW-15). During the course of further investigation, PSI Chandrahas Naik (PW-13) and CPI Shankar (PW-18) recorded the statements of witnesses and arrested the appellants. Appellant No.1, however, was able to obtain anticipatory bail and was, thus, released after her arrest.

4. After the completion of investigation and filing of charge-sheet, the case was committed to the court of Additional Sessions Judge at Chitradurga. Charges were framed under Sections 504, 302, 114 read with Section 34 IPC against the appellants, to which they pleaded not guilty and claimed trial. The prosecution examined nineteen witnesses and thirteen documents to establish the guilt of the accused. The case of the appellants, as recorded in their statements under Section 313 of the Code of Criminal Procedure, 1973 ("CrPC") was one of total denial. No defense evidence was led by them.

5. During the course of trial, several prosecution witnesses turned hostile. PW-2, son of the deceased, put forward an alternative chain of events wherein he claimed that the deceased committed suicide because she couldn't bear the fact that her son Thippeswamynaika was arrested and sent to jail for beating husband of the 1st appellant. PW-2 further stated that the deceased was unable to speak after the incident. In a similar vein, daughter-in-law of the deceased (PW-5) also contradicted the prosecution version and denied any knowledge as to how the deceased died. Regarding the arrest of her husband Thippeswamynaika, PW-5 disputed the fact that any quarrel had taken place on 10.09.1998 and claimed that she was not aware of the reason behind her husband's arrest. PW-1 and PW-15 who are *mahazar* witnesses also did not support the prosecution case; they denied being called by the Police and stated that nothing was seized in their presence. The only material witnesses who supported the prosecution version were PW-11 (K.V. Mallikarjunappa) and PW-16 (Dr. A. Thippeswamy). They deposed that the statement of the deceased (Ex.P-5), accusing the appellants for the murderous attack on her was genuine and voluntary.

6. Since it was not in dispute that Jayamma died due to burn injuries, the crucial question before the trial Court was whether the death was suicidal or homicidal. The trial Court noted that the sole

material on record to connect the accused persons with the offence of murder was the statement of the deceased Ex.P5, which was being treated as a dying declaration. The prosecution heavily banked upon the said statement in order to prove the guilt of the accused. However, upon considering the mitigating circumstances such as testimonies of the hostile witnesses, nature of burn injuries of the victim, and the lack of any corroborative evidence, the trial Court was of the opinion that the prosecution had failed to prove the genuineness of Ex.P5 beyond all reasonable doubt. The evidence of PW-11 and PW-16 who had supported the prosecution case was found to be vague and unsatisfactory. Consequently, the Court held that the prosecution had failed to discharge its onus and acquitted the appellants.

7. The High Court in appeal reversed the findings of the trial Court and held that the evidence consisting of dying declaration was clinching and sufficient to bring the guilt home. While several arguments appear to have been raised on behalf of the appellants, the High Court brushed aside the same, plainly stating that no credence could be attached to the testimonies of the hostile witnesses. The High Court instead placed emphasis on the testimonies of PW-11 and PW-16 who had corroborated the contents of the dying declaration (Ex.P-5). The High Court found no good

ground to disbelieve either the testimonies of PW-11 and PW-16, or the contents of the dying declaration (Ex.P-5), and reversed the acquittal awarded by the trial court. The appellants were consequently convicted under Section 302 read with Section 34 IPC and sentenced to life imprisonment.

8. Discontented with the order of the High Court, the appellants have assailed their conviction and sentence through these two criminal appeals. Since the High Court has summed up its conclusions by way of a brief order, we deem it appropriate to reproduce the two relevant paragraphs no.4 and 6 of its impugned judgment which are to the following effect:-

> *"4. On through consideration we find that although the material witnesses PWs.2 and 5 have turned hostile, the evidence placed by the prosecution by way of dying declaration is very much clinching. PW 11 recorded statement and testified the fact of recording statement at Ex.P-5 and his evidence also discloses that it was recorded in the presence of the doctor PW16 and the doctor has given endorsement at Ex.P-5©. He has also deposed that the deceased was in a fit state of mind and she gave the statement voluntarily which was recorded by PW11 in his presence. The contents of Ex.P-5 implicates all the accused for causing murder with common intention.*
>
> xxx xxx xxx
>
> *6. On thoroughly going through the documents, we find that no credence could be attached to the evidence of the witnesses who have turned hostile. PW16 is an independent witness. The evidence of PW 16 discloses that the deceased made a statement at Ex.P-5*

and it is voluntarily and that she was in a fit state of mind to give her statement. The evidence of PW 11 shows that he recorded statement in the presence of PW16 and Ex.P-5 contains the endorsement of the doctor. There is no good reason to disbelieve the version of PWs. 1 (sic) and 16 and the contents of Ex.P-5. The autopsy report discloses that the death is on account of burn injuries which corroborates the e=contents (sic) of Ex.P-5. In view of the above, we find that the acquittal is bad in law and hence, the same is set aside. In the result we pass the following order:

The appeal is allowed. Accused Nos. 1 to 4 are convicted for an offence punishable under Section 302 read with Section 34 of IPC. The accused persons are sentenced to life imprisonment."

CONTENTIONS

9. We have heard learned counsels for the parties at considerable length and perused the record in-depth. The principal contentions raised on behalf of the appellants are that the High Court's order is totally cryptic and it erroneously reversed the well-reasoned order of acquittal passed by trial Court. Relying upon a catena of decisions of this Court including in the cases of ***Chandrappa v. State of Karnataka***[1], ***Perla Somasekhara Reddy and Others v. State of A.P.***[2], ***State of Rajasthan v. Shera Ram***[3], ***Shyam Babu v. State of Uttar Pradesh***[4], ***Murugesan v. State***[5], ***Mookkiah v. State***[6],

[1](2007) 4 SCC 415.
[2](2009) 16 SCC 98.
[3](2012) 1 SCC 602.
[4] (2012) 8 SCC 651.
[5] (2012) 10 SCC 383.
[6] (2013) 2 SCC 89.

and ***Shivasharanappa v. State of Karnataka***[7], it was urged that the High Court while interfering with an order of acquittal was under an onerous duty to scrutinize the evidence on record, and should return a categorical and cogent finding as to why it was impossible to sustain the order of the trial Court or why it deserved interference. It was contended that neither did the High Court evaluate the entire evidence nor it dealt with the specific findings of the trial Court, and as such, the High Court failed to discharge its obligation under Section 378 CrPC. It was further argued that in the facts and circumstances of the present case, Ex. P-5 i.e., the purported dying declaration cannot form the sole basis to convict the appellants. Relying upon the decision of this Court in ***Surinder Kumar v. State of Haryana***[8], it was canvassed that since the document Ex.P-5 was shrouded with doubtful circumstances, the same cannot be acted upon to be the solitary basis for conviction in the absence of any corroboration. Learned Counsel also drew our attention to ***Paparambaka Rosamma & Ors v. State of A.P.***[9] and argued that in the absence of a medical certificate attesting to mental fitness of the deceased before recording of the dying declaration, the High Court ought not to have placed any reliance upon Ex.P-5. It was then

[7] (2013) 5 SCC 705.
[8](2011) 10 SCC 173, ¶ 25, 26 & 28.
[9](1999) 7 SCC 695 ¶ 8,9 &12.

submitted that the High Court overlooked the fact that the prosecution has miserably failed to establish any motive in the present case and, thus, conviction of the appellants was untenable.

10. Per Contra, learned State Counsel supported the conviction awarded by the High Court. He drew our attention to paragraphs 4 and 6 of the impugned order to suggest that the High Court had not only given a well-reasoned judgment but also buttressed it with specific reasons, warranting interference in the order of acquittal. Reliance was placed on **Vijay Pal v. State (Government of NCT of Delhi)**[10] in order to contend that even in cases of hundred percent burn injuries, the Courts can rely upon the dying declaration to convict the accused.

ANALYSIS

11. In light of the rival contentions, the following questions fall for our consideration.

A. Whether the High Court erred in reversing the findings of the trial Court in exercise of its powers under Section 378 of the CrPC?

B. Whether the prosecution has successfully established that the deceased died a homicidal death at the hands of the appellants?

[10](2015) 4 SCC 749.

12. It may be seen that the entire case revolves around the evidentiary value of the purported dying declaration dated 22.09.1998 (Ex.P-5). The High Court has heavily relied upon it along with the corroborative statements of K.V. Mallikarjunappa (PW-11), who is the police officer who recorded Ex.P-5, and of Dr. A. Thippeswamy (PW- 16), who was present at the time of recording the dying declaration and also endorsed the mental fitness of the deceased to make such statement. It thus appears useful to reproduce the translated version of the said dying declaration (Ex.P-5) which reads as follows:-

> "*I have been residing at the above given address. Today after having food, I was sleeping in front of my house near Kurukoppa, in the night at 10.00 pm a resident of our village Reddy Nayak and his wife Jayamma, came near our Kurukoppa and complained that since my son had beaten her husband, she has spent four thousand rupees and scolded in filthy language. I was keeping quite at that time. All of a sudden Jayamma, wife of Reddy Nayak, Laccha Nayaka, son of Chandra Nayak, Thippeshi, son of Rama Naika, Shankara Nayaka, son of Namya Nayka all of them advanced towards her and threatened to kill her, and poured kerosene oil all over her body and torched. Therefore, I have sustained burn injuries over my hands and entire body. When I started shouting, the Accused ran away from the spot. My son Ravi, son of Rama Nayaka, and my daughter Sharadamma, wife of Mallenayaka poured water all over my body, doused the fire, and my son Ravi and my daughter Sharadamma took me to Taluk Hospital in a cart for treatment. I pray for taking suitable action against the Accused as provided in law.*"

13. It is most relevant to mention at this stage that we have also perused the original dying declaration (in Kannada language). The original dying declaration begins with the statement of the injured, which is purportedly based upon the questions asked by the police officer (PW-11), and right below the statement, there is the thumb impression of injured (deceased). Immediately below there are signatures of the police officer (PW-11) who recorded the dying declaration in his own hand writing. Since very less space was left on the page, Dr. A. Thippeswamy (PW-16) has on the left side of the paper written a line in broken words which goes from south-west to north- east, endorsing that the "*Patient was in a sound state of mind at the time*." In the leftover available space on the right hand side, the police officer (PW-11) has remarked that the statement was recorded by him on 22.09.1998 in the night at 1.15 am in Thalak Hospital and thereafter he came to the police station and registered a case crime no.101/1998 under Sections 504, 307 read with 34 IPC. These remarks by PW-11 are written in a different ink, and it further appears that PW-11 also used the same pen to make a 'small correction' in the original dying declaration, i.e., some words, written in a different ink, have been inserted between two lines of the dying declaration.

14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P-5), it will be beneficial to brace ourselves of the case-law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

A. In ***P.V. RADHAkrishnA. v. StAte of KArnAtAkA***[11]**,** this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

B. In ***CHAcko v. StAte of KeRAlA***[12]**,** this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns.

[11](2003) 6 SCC 443 ¶ 16.
[12](2003) 1 SCC 112 ¶ 3, 4.

It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "*patient conscious, talking*" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

C. In ***SHAm SHAnKAr KAnkAriA v. StAte of MAHArAShtrA***[13]**,** it was re-stated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in ***PAniben v. StAte of***

[13] (2006) 13 SCC 165 ¶ 10, 11.

GujARAt[14] wherein this Court summed up several previous judgments governing dying declaration, the Court in ***SHAm SHAnKAr KAnkAriA (SupRA)*** reiterated::-

> *"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P.[(1976) 3 SCC 104]);*
>
> *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 and Ramawati Devi v. State of Bihar [(1983)1 SCC 211]);*
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> *(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]);*
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> *(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264]);*
>
> *(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25]);*
>
> *(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654]);*
>
> *(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State*

[14] (1992) 2 SCC 474 ¶ 18.

of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769]);

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152]);

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390]);

(xi) Where there are more than one statement 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. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700])"

15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the decease admissible. Such

statement, classified as a "*dying declaration*" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

16. We may also take note of the decision of this Court in the case of ***Surinder KumAr (SupRA).*** In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95-97 per cent burn injuries. Thereafter, it was noted that "***At the time of recording the stAtement of the deceASed…….no endorsement of the doctor wAS mAde About her position to mAke such stAtement***", and only after the recording of

the statement did the doctor state that the patient was conscious while answering the questions, and was "*fit to give statement*". This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the Court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

17. Consistent with the cited principles, this Court refused to uphold the conviction in the case of ***SAmpAt BAbso KAle And Another v. StAte of MAHARAShtRA***[15]**.** The dying declaration in that case was made by a victim who had suffered 98 percent burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative

[15]2019 (4) SCC 739 ¶ 14, 16.

had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that **"*the endorsement mAde by the doctor tHAt the victim wAS in A fit stAte of mind to mAke the stAtement HAS been mAde not before the stAtement but After the stAtement wAS recorded. NormAlly it should be the other wAy Around*."**

[emphasis supplied]

18. We may now proceed to evaluate the evidentiary value of purported dying declaration (Ex.P-5). As noticed earlier, the son and daughter-in-law of the deceased, their neighbour and other witnesses from the vicinity, have resiled and not supported the prosecution case. Only two material witnesses are left out, one being police officer K.V. Mallikarjunappa (PW-11) who is the author of the dying declaration, the investigating officer and the prosecutor. The second, and more crucial witness, is Dr. A. Thippeswamy (PW-16), who was working in the P.H.C., Thalak at the relevant time. As per his deposition, the statement of the injured was taken in front of him and the patient was in a sound state of mind at that time. PW-16 was the one who had informed the police regarding admission of Jayamma (the deceased victim) in the hospital, and in his cross-examination, he has admitted

that painkillers were given immediately after admission. He has acknowledged that in a case of fourth degree burns the patient will be "*delirious and in a period of confusion*". He has not denied that due to painkillers there was bound to be drowsiness. He has also not denied that "*hand, body was fully burnt*" and that "*hand includes the fingers*". He has candidly owned up that the police did not take his written permission before recording the statement.

19. As regard to the version of K.V. Mallikarjunappa (PW-11), he has deposed that he was the SHO of police station on the night when he received a phone call from Taluka Government Hospital at about 12:45 a.m. He went to the hospital and noticed Jayamma with burn injuries. According to him the doctor examined her and said that "she was in a position to talk", then the statement of Jayamma was taken in the presence of the doctor and after he put in his signatures, the medical officer also endorsed and signed it. In his cross-examination, PW-11 has stated that "*Jayamma's son, daughter-in-law and one other person was also present….".* He has, however, admitted that no written permission was sought or taken before recording the statement of the injured and that he "*questioned Jayamma - the injured, as to how it happened. Then she narrated about the incident..... Jayamma - the injured, narrated the details of the*

accused persons. The thumb impression was taken since the said finger was not burnt"

20. It is a matter of record that Ravi Kumar (PW-2), son of the deceased has been evasive as to who brought the injured to the hospital. Rest of the prosecution case has also been denied by him. Even, Saroja Bai (PW-5) daughter-in-law of the deceased, has completely repudiated the prosecution case. This set of evidence does not indicate or support the prosecution case that the injured was in a position to speak or narrate the incriminating events of the incident before or after she was rushed to the hospital. Their version runs contrary to the statement of Dr. A. Thippeswamy (PW-16) and the police officer K.V. Mallikarjunappa (PW-11).

21. The litmus test, therefore, is whether the victim made the statement (Ex.P-5) and if so, whether such statement can be the solitary foundation for conviction of the appellants?

22. Having meditated over the issue to the extent it is possible, and on a minute examination of the original document Ex.P-5 (without understanding its contents as it is in *Kannada* language except that the endorsement of the doctor is in English) read with its true translation placed on record, we do not find it totally safe to convict

the appellants on the basis of the said document alongwith its corroboration by PW-11 and PW-16. We say so for several reasons as summarised hereinafter:

Firstly, the narration of events in the dying declaration is so accurate, that even a witness in the normal state of mind, cannot be expected to depose with such precision. Although it is stated that deceased was questioned by the Police officer, the purported dying declaration is not in a questions and answers format. The direct or indirect dominance of the Police Officer appears to have influenced the answers only in one direction.

Secondly, the injured victim was an illiterate old person and it appears beyond human probabilities that she would have been able to narrate the minutes of the incident with such a high degree of accuracy.

Thirdly, there is sufficient evidence on record that the victim had been administered highly sedative painkillers. Owing to 80% burn injuries suffered by the victim on all vital parts of the body, it can be legitimately inferred that she was reeling in pain and was in great agony and the possibility of her being in a state of delusion and hallucination cannot be completely ruled out. We say so at the cost of

repetition that the doctor (PW-16) made the endorsement that the victim was in a fit state of mind to make the statement 'after' the statement was recorded and not 'before' thereto — being the normal practice. It further appears to us that faculties of the injured had been drastically impaired and instead of making statement in an informative form she had apparently endorsed what the Police Officer (PW-11) intended to. True it is that the Police Officer (PW-11) had no axe to grind or a motive to implicate the appellants, but his over- enthusiasm to solve a criminal case within no time seems to have swayed the Police Officer (PW-11) so much that he appears to have not asked the doctor to make an endorsement of fitness of the victim before recording the statement. He also did not deem it appropriate to call a Judicial or Executive Magistrate to record such statement, for the reasons best known to himself.

Fourthly, there is a serious contradiction between the statement of Dr. A. Thippeswamy (PW-16) on one hand and the police officer K.V. Mallikarjunappa (PW-11) on the other, in respect of the nature of burn injuries suffered on different body parts of the victim. While the doctor acknowledges that burn injuries included the hands of the victim, the police officer claims that her hands were safe and she could put her thumb impression. We have seen the thumb impression very

scrupulously and the same appears to be absolutely natural. If that is so, the medical officer, whose statement should carry more weightage in respect of the nature and gravity of injuries, stands belied.

Fifthly, and most importantly the police officer K.V. Mallikarjunappa (PW-11) candidly admits that he did not seek an endorsement from the doctor as to whether the injured was in a fit state of mind to make a statement, before he proceeded to record the statement. Both the police officer as well as the doctor have tried to cover up this serious lacuna by referring to the purported oral endorsement of the doctor. It appears that the police officer was in full command of the situation and with a view to fill up the legal lacuna, he later on secured the endorsement from the doctor (PW-16) on the available space of the paper, which is ex-facie unusual and not in line with settled legal procedure.

Sixthly, the alleged motive for the homicidal death is highly doubtful. There is not an iota of evidence, and the prosecution has made no effort to verify the truth in the statement that the appellants poured kerosene and lit the victim on fire only because her son had assaulted the husband of Appellant No.1 and the accused were insisting on payment of Rs.4,000/- which was spent on the treatment of the said

assault–victim. Not much can be said when the deceased's own son and daughter-in-law have denied this incident and rather claimed that their mother/mother-in-law committed suicide.

The ***Seventh*** reason to dissuade us from harping upon Ex.P-5 is the conduct of the parties, i.e., a natural recourse expected to happen. Had it been a case of homicidal death, and the victim's son (PW-2) and her daughter-in-law (PW-5) had witnessed the occurrence, then in all probabilities, they would have, while making arrangement to take the injured to hospital, definitely attempted to lodge a complaint to the police. Contrarily, the evidence of the doctor and the police officer suggest that while the son, daughter-in-law and neighbour of the deceased were present in the hospital, none approached the police to report such a ghastly crime. It is difficult to accept that the son and daughter-in-law of the deceased were won over by the accused persons within hours of the occurrence. This unusual conduct and behaviour lends support to the parallel version that the victim might have committed suicide.

The ***Eighth*** reason which makes us reluctant to accept the contents of purported dying declaration (Ex. P-5), is the fact that victim, Jayamma was brought to the Civil Hospital at 12.30 a.m. on 22.09.1998. She succumbed to her burn injuries after almost 30

hours later at 5:30 am on 23.09.1998. It is neither the case of prosecution nor has it been so stated by PW-11 or PW-16 that soon after recording her statement (Ex. P-5) she became unconscious or went into coma. The prosecution, therefore, had sufficient time to call a Judicial/Executive Magistrate to record the dying declaration. It is common knowledge that such Officers are judicially trained to record dying declarations after complying with all the mandatory pre-requisites, including certification or endorsement from the Medical Officer that the victim was in a fit state of mind to make a statement. We hasten to add that the law does not compulsorily require the presence of a Judicial or Executive Magistrate to record a dying declaration or that a dying declaration cannot be relied upon as the solitary piece of evidence unless recorded by a Judicial or Executive Magistrate. It is only as a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a Judicial or Executive Magistrate so as to muster additional strength to the prosecution case.

23. The other important reason to depart from the High Court's view *re.* conviction of the appellants is that the power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a 'possible view'. The judgment of the trial court cannot be set aside

merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact.

24. If the case in hand is evaluated on these parameters, it may be seen from paragraphs 4 and 6 of its order that the High Court dealt with the appeal against acquittal summarily and did not even discuss the ocular evidence, especially of the son and daughter-in-law of the deceased, who have, to some extent, belied the version of the doctor (PW-16) or the investigating officer (PW-11). We say so for the reason that according to Ravi Kumar (PW-2), son of the deceased, the victim Jayamma had lost consciousness and was unable to speak at the time when she was rushed to the hospital in a bullock cart arranged by Kumaranaika (PW-3). Without discarding or disbelieving such statement(s), it is difficult to accept that injured — Jayamma was in a

fit state of mind at 1:15 a.m. when the alleged dying declaration was recorded. Her state of mind can be well imagined due to the combined effect of the trauma and the administration of painkillers. The High Court, on the other hand, relied upon the dying declaration (Ex.P-5) as the same was purportedly corroborated by the statements of doctor (PW-16), and the police official (PW-11) who authored the document (Ex.P-5). Such a conclusion, in our considered opinion, is totally erroneous and based upon misreading of the evidence on record. It has already been noticed that according to the doctor (PW-16), the victim had suffered 80% injuries including on her hands. As against it, the Police Officer (PW-11) claims that there were no burn injuries on the hand of the victim, hence she could put her left thumb impression on the dying declaration (Ex.P- 5). These glaring contradictions should not have gone unnoticed by the High Court.

25. At this juncture, we may also delve into the nature of motive attributed to the appellants. The document (Ex. P-5) itself recites that son of the injured-deceased, Thippeswamynaika, had beaten the husband of Appellant No. 1 and the appellants had statedly incurred medical expenses to the tune of Rs. 4,000/- which they demanded from the injured-deceased and then they doused kerosene and set her on fire. In the absence of any provocation from the side of

injured, the cause itself being so trivial in nature and the factum of causing any injuries to the husband of Appellant No. 1 having been expressly denied by the daughter-in-law of the deceased, namely, Saroja Bai (PW-5), coupled with the fact that there is no evidence whatsoever to prove that any such incident took place, we are satisfied that the so-called motive has not been proved at all and the declaration Ex. P-5, thus, recites a non-existent incident.

26. The Additional Session Judge, Chitradurga in his judgment dated 30.11.2001 formulated point no. 1 as to whether the prosecution was able to prove beyond all reasonable doubt that the accused persons with an intention to kill Jayamma went to her house and picked up a quarrel in connection with a previous dispute and then doused her with kerosene and set her ablaze. The Additional Sessions Judge extensively examined the entire evidence and after reaching to the conclusion that all the witnesses of the motive or the occurrence have resiled and declared hostile, he was left with the residuary question to decide as to whether the death was suicidal or homicidal. He, thereafter, considered the dying declaration (Ex. P-5) threadbare and critically analysed the statements of the police officer (PW-11) and the doctor (PW-16). The factors like (i) interpolation in the dying declaration Ex.P-5, (ii) contradiction in the statements of PW-11 and PW-16 regarding injuries on the palm, (iii)

the victim with 80% injuries was apparently not in a situation to talk or give statement, (iv) PW-2, son of the deceased himself has stated that his mother committed suicide as she could not bear that her another son had been sent to jail, (v) there being no corroborative evidence to the statement Ex.P-5, and (vi) there is no other evidence led by the prosecution to connect the appellants with the crime except the statement Ex.P-5, he held it unsafe to convict the appellants on the solitary basis of the dying declaration (Ex. P-5).

27. We fully endorse the view taken by the learned trial court. The reasons which we have assigned in paragraph 22 of this Order are sufficient to cast clouds on the genuineness of the prosecution case. We find it difficult to uphold the conviction only on the basis of the dying declaration Ex. P-5.

28. Consequently, and for the reasons aforestated, both the appeals are allowed. The impugned order dated 29.07.2008 of the

High Court is set aside and the appellants are set free. Since, they are already on bail, their bail bonds are discharged.

…….. CJI.

……..…… J.
(SURYA KANT)

……...J.
(ANIRUDDHA BOSE)

NEW DELHI DATED
:07.05.2021