

MHAU040016762024



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**Part 'A'**

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE**

**AT VAIJAPUR, DISTRICT AURANGABAD**

**(Present: Smt.S.K. Upadhyay)**

**[Date of the Judgment: 6<sup>th</sup> April 2026]**

**SESSIONS CASE NO.100/2024**

**Exh.No.65**

FIR/Crime No.	177/2024
Police Station:	Shiur, Tq.Vaijapur, District Aurangabad.

Prosecution	:	The State Of Maharashtra, Through Asstt. Police Inspector, Police Station Shiur, Tq.Vaijapur, Dist. Aurangabad
Represented By	:	Shri N.S.Jagtap – Learned A.P.P. for the State
<b>Versus</b>		
Accused	:	Nitish Vitthal Sonwane Age : 28 years, Occ. : Agriculturists All R/o. : Waghale, Tq.Vaijapur, Dist. Chhatrapati Sambhajinagar
Represented By	:	Mr.N.S.Ghanekar, Learned advocate for accused

**Part-'B'**

Date of offence	:	15.05.2024
Date of F.I.R.	:	15.05.2024
Date of Charge-sheet	:	07.08.2024
Date of framing charge	:	10.10.2025
Date of commencement of evidence	:	05.11.2025
Date on which judgment is reserved	:	02.04.2026
Date of Judgment	:	06.04.2026
Date of sentencing order if any	:	--

**Accused Details**

<b>Name &amp; Rank of Accused</b>	<b>Date of Arrest</b>	<b>Date of Release on Bail</b>	<b>Offence charged with</b>	<b>Whether acquitted or convicted</b>	<b>Sentence Imposed</b>	<b>Benefit of Section 428, Cr.P.C. (Set off)</b>
Nitin Vitthal Sonwane	16.05.24	Accused is in jail	Section 302, 307, 323 and 504 of Indian Penal Code	Acquitted	--	--

**Part 'C'**

(List of Prosecution/Defence/Court Witnesses)

**A. Prosecution:**

<b>Sr. No.</b>	<b>Rank</b>	<b>Name</b>	<b>Nature Of Evidence</b>
1.	PW-1/ Exh.No.15	Savita Tukaram Warpe	Who recorded D.D.of informant
2.	PW-2/ Exh.No.19	Rahul Ranganath Thorat	Who typed the PDF statement of deceased
3.	PW-3/ Exh.No.24	Babasaheb Raghunath Sonwane	Panch on spot panchnama
4.	PW-4/ Exh.No.33	Meera Sanju Borade	Sister of deceased
5.	PW-5/ Exh.No.37	Dr.Sumayya Teharin Shaikh	Medical Officer
6.	PW-6/ Exh.No.39	Anusayabai Dashrath Dage	Mother of deceased
7.	PW-7/ Exh.No.45	Dr.Vernonleo Desousa	MO who gave opinion to record the statement of deceased
8.	PW-8/ Exh.No.46	API Chetan Vasant Rao Ogale	Investigating Officer
9.	DW-1/ Exh.No.58	Satish Vitthal Sonwane	Brother of accused
10.	DW-2/ Exh.No.62	Ganesh Walmik Bhusare	Neighbour of accused

**B. Defence Witnesses, if any :**

<b>Rank</b>	<b>Name</b>	<b>Nature Of Evidence</b>
Nil	Nil	Nil

**C. Court witnesses, if any :**

<b>Ran k</b>	<b>Name</b>	<b>Nature Of Evidence</b>
Nil	Nil	Nil

**Part 'D'**

**List of Prosecution/Defence/Court Exhibits**

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exh.No.16	Letter to MO regarding whether informant was in position to give statement
2.	Exh.No.17	Opinion of MO
3.	Exh.N.18	Statement/ written dying declaration
4.	Exh.No.20	Report
5.	Exh.No.25	Spot panchnama
6.	Exh.No.26	Label on packet in which piece of red colour sarri kept
7.	Exh.No.27	Label on bottle in which blue colour substance kept
8.	Exh.No.38	Letter to MO for conducting PM on deceased
9.	Exh.No.39	Postmortem report of deceased
10.	Exh.No.40	Notice to PW-5 Anusayabai for recording her statement
11.	Exh.No.47	Notice for getting panch witness
12.	Exh.No.48	Muddemal Receipt about depositing sari, plastic bottle, match sticks, soil
13.	Exh.No.49	Arrest Panchnama
14.	Exh.No.50	Muddemal receipt about depositing clothes of

		accused
15.	Exh.No.51	Letter to CA about sending of seized muddemal
16.	Exh.No.52	Acknowledgment from CA office
17.	Exh.No.53	Letter to JMFC court for enhancement of section
18.	Exh.No.54	Letter to MO for obtaining post-mortem report
19.	Exh.No.55	C.A. Report
20.	Exh.No.56	Portion Marked-A in the statement of PW-4 Meera
21.	Exh.No.59	Notice

**B. Defence: Admitted by accused -**

Sr.No.	Exhibit Number	Description
1	Exh.No.21	Seizure Panchnama of clothes of accused
2	Exh.No.22	Inquest Panchnama
3	Exh.No.23	Postmortem report of deceased

**C. Court Exhibits -**

Sr.No.	Exhibit Number	Description
1	Article-A	Photos of the spot of incident

**D. Material Objects -**

Sr.No.	Exhibit Number	Description
1	MO-1	Piece of burn red colour Sarri

2	MO-2	Blue colour substance kept in bottle
3	MO-3	Sticks of match box
4	MO-4	Pant
5	MO-5	Pink colour shirt

**:: J U D G M E N T ::**

(Delivered on this 6<sup>th</sup> Day of April, 2026 in open Court)

1. Accused Nitish Vitthal Sonwane stands charge-sheeted for the offences punishable under sections 302, 307, 323 and 504 of the Indian Penal Code (in short 'IPC').

2. **The prosecution case in a chronological event is as follows -**

i) Deceased Sarla was the wife of accused Nitish. Their marriage was performed prior to 4 years of the incident. They were cohabiting together . On 15.05.2024 at about 07.00 a.m. deceased sustained burn injuries at her matrimonial house. She was taken to GMCH Hospital, Aurangabad. The medico legal case was registered and the police were informed.

ii) Lady constable Savita Tukaram Varpe Police Station visited GMCH Hospital, Aurangabad. On 15/5/24 she recorded statement of deceased Sarla. She stated to her that "she along-with her husband, two daughters, mother-in-law, two brother-in-law resides at Waghla, Tq.Vaijapur, Dist.Chhtrapati Sambhajinagar. Her husband i.e. accused Nitish Sonwane is alcoholic and under influence of liquor he

always used to beat her and tell her he don't like her and want to marry someone else.

**iii)** On 15.05.2024 at about 01.00 in the night she was sleeping in house, his husband came, woke up her, by saying her he don't like her, abused her and assaulted her by kick and fist blows. Out of fear she did not inform anyone and fell asleep.

**iv)** Thereafter in the morning at around 07.00 a.m. her husband took her to field behind their house, abused her, threw petrol from petrol bottle on her person, set her on fire by matchbox and thereafter her husband left from there. On hearing shouts, her both brother-in-laws came there, extinguished her by quilt and took her to Ghati hospital. Due to which her whole body below the chest is burnt and she was undergoing treatment". Therefore her statement was recorded in presence of her mother.

**v)** This statement of deceased Sarla was treated as report. The crime number. 177/2024 under section 307, 323 and 504 of IPC was registered against accused.

**vi)** On 1/6/24 at about 04.30 a.m Sarla succumbed to the burn injuries. Therefore, the police added section 302 of the IPC.

**3.** The investigation of Crime No.177/2024 in question was conducted by API Chetan Vasant Rao Ogale. He prepared spot panchnama in presence of panchas. He had taken photographs of the spot of incident, seized muddemal found on the spot including half burnt sari, one plastic bottle having inflammable substance in blue colour, piece of match stick and prepared seizure panchnama, arrested accused, seized clothes of accused and sent it to CA for analysis.

During investigation deceased succumbed to death therefore he prepared inquest panchnama, obtained postmortem report and CA report. He recorded the statements of the witnesses. After investigation, the investigating officer filed charge-sheet against accused in the Court of learned JMFC, Vaijapur.

4. After taking cognizance of the offence since the offence under Section 302 and 307 IPC is exclusively triable by the Sessions Court. Hence, the learned Judicial Magistrate First Class, Court No.3, Vaijapur committed the case to Addl. Sessions Court, Vaijapur vide its order dated 10.09.2024.

5. The charge vide Exh.7 was framed and explained to accused in vernacular language. He pleaded not guilty to the charge and claimed for trial. The prosecution examined eight witnesses. Accused in his examination under section 313 of Cr.P.C. denied the incriminating evidence. His defence is that deceased Sarla herself committed suicide by setting her ablaze. Accused led evidence in his defence and examined two witnesses in support of his defence, including Satish Vitthal Sonwane as DW1 at Exh.58 who is brother of accused and DW2 Ganesh walmik Bhusare at Exh 62.

6. At the conclusion of the trial, I have heard the learned APP Mr.N.S.Jagtap for the State and the learned advocate Mr.N.S.Ghanekar for accused.

7. The following points arise for my determination. I have recorded my findings thereon for the reasons to follow as under-

Sr.No.	Points	Findings
1	Does the prosecution prove that on 15.05.2024 at about 07.00 a.m. in field back side of house of deceased at Waghla, Tq. Vaiajpur, Dist. Aurangabad, accused committed murder by pouring petrol on the person of his wife Sarla Nitish Sonwane, and set her on fire intentionally and knowingly causing the death of his wife and thereby committed an offence punishable under section <b>302</b> of IPC ?	No
2.	Does the prosecution prove that at 01.00 in the night time in the house of deceased at Waghla, tq.Vaijapur. Dist. Aurangabad, accused assaulted deceased, by leg and kick and on the following day set her on fire by pouring petrol on her petrol, with such intention or knowledge and under such circumstances that if, by that act, accused had caused the death of deceased Sarla Nitish Sonwane, accused would have been guilt of murder by above said acts, and thereby committed and offence punishable under section <b>307</b> of IPC ?	

		No
3.	Does the prosecution prove that on above date, time and place accused voluntarily caused hurt to his wife, Sarla Sonwane and thereby committed an offence punishable under section 323 of IPC ?	No
4.	Does the prosecution prove that on above date, time and place, accused intentionally insulted his wife by giving abuses and assaulted her and thereby gave provocation to her intending or knowing it to be likely that such provocation will cause her to break public peace and thereby committed an offence punishable under section 504 of IPC ?	No
5	What order ?	Accused is acquitted, as per final order

### REASONS

#### *Evidence of prosecution -*

8. To prove the offences against accused, the prosecution has examined following eight witnesses.

9. PW1 Police constable Savita Tukaram Warpe is material witness as she recorded statement of deceased which later assumed the character of dying declaration. She deposed that on 15.05.2024 she was working with Shivur Police Station. MLC No.5395/24 from Ghati hospital was received that deceased Sarla is burnt hence she

went to GMCH Aurangabad. She deposed that pursuant to her inquiry and letter exh 16, the medical officer gave his written endorsement Exh.17 stating that deceased Sarla is fit to give statement. She deposed that she recorded statement of deceased Exh.18 of Sarla.

**10.** She further deposed that she took thumb impression of mother of deceased Sarla on said statement. She deposed that the said statement was sent to PSO Thorat/PW-2 of Shivur police station through PDF, it was treated as report and crime was registered.

**11.** Rahul Ranganath Thorat/PW-2 was PSO who registered report on the basis of PDF sent by PW1. He deposed that on 15.05.2024 he was Police Station officer at Shivur Police Station. On that day he received the MLC statement through PDF from PW1 from her mobile. He typed report on the basis of PDF copy in his laptop and registered the report Exh.20. Based on the said MLC statement , he has registered the crime number 177/2024 under section 307, 323, 504 of the IPC.

**12.** Babasaheb Raghunath Sonwane/PW-3 is panch of spot panchnama . He deposed that on 16.05.2024 Shivur Police called him to the farm of accused. Yogesh Vitthal Sonawane showed them the spot of incident. At the spot they saw burnt red saree cloth, a bottle containing blue inflammable substance, sticks of match box. Police seized soil from the spot and prepared spot and seizure panchnama. Again police called them in the evening at about 05.30 p.m. At that time accused produced his clothes and police prepared seizure

panchnama.

**13.** PW-4 Meera Sanju Borade is elder sister of deceased Sarla. She deposed that the marriage of the deceased Sarla was performed prior to three years. After marriage, the accused treated her well for about six months; thereafter, he started consuming liquor and used to beat her. They attempted to give him understanding. On 15.05.2024 at about 08.00 to 08.30 a.m. they received a phone call from Satish Sonwane informing that, Sarla was burnt and they brought her to Ghati hospital. Thereafter, she along with her mother went to ward No. 22-23 of the Ghati hospital. They found that the deceased was burnt from her chest down. The deceased told them that the accused came in the night in a drunken condition, beat her. She further stated to them that the accused woke her up in the morning at about 06.00 a.m., took her to the field, poured petrol on her and set her on fire and left from there. She raised shouts at that time; her brother-in-law Satish and Yogesh came there and extinguished the fire by putting a blanket on her person and brought her to the hospital. During treatment she expired on 01.06.2024.

**14.** Dr.Sumayya Teharin Shaikh/Autopsy Surgeon PW-5 conducted postmortem of deceased Sarla. On 01.06.2024 Shiur police station vide its letter refer dead body of one Sarla Nitesh Sonwane for conducting postmortem. Accordingly she has conducted postmortem.

**15.** She further testified that deceased was history of homicidal burn on 15.05.2024 at around 08.30 p.m. at home.

Deceased was admitted in Ghati hospital on 15.05.2024 for treatment and she succumbed to death on 01.06.2024 at about 04.30 p.m. While conducting post-mortem she has noticed following injuries mentioned in column no.13, 14, 15 and 17 of my post-mortem report –

**In column no.13** – Yellowish fluid oozing from nostrils.

**In column no.14** – The condition of skin was dry, the evidence of burn injuries were present on body, evidence of bluish ink stain present over right thumb, bilateral pedal oedema present. (There was swelling on the both legs with fluid)

**In column no.15** - Injuries on external genitals – the evidence of swelling over external genitals were present with superficial burn

**In column no. 17** - Surface wound and injuries -

head neck & face- whole are spared

chest- 5% upper area spared

abdomen – 8% area over and lateral to umbilicus spared

back – 7% upper half and mid lumbar area of lower half spared

right upper limb – 4.5 % posterior aspect of whole limb except part of dorsum,

left upper limb – 6% posterior aspect of arm, forearm & hand in patches spared

right lower limb – 15.5% some part of antero-medical aspect of leg and some part of foot spared. The burn was of total 60% on the body of the deceased.

Evidence of deep burns present over chest, abdomen, back, upper limbs, both thigh, posterior aspect of both legs. Rest of the burns were superficial. The burn areas were foul smelling with evidence of

yellowish-greenish pus with evidence of granulation tissue and marginal healing at places.

Therapeutic intravenous lines in the form of puncture wounds present over dorsum of right hand, right cubital fossa region and central line present over right clavicular region of chest. Injuries mentioned in column no.17 were ante-mortem.

**16.** she deposed that viscera was not preserved as there was burn injury. After conducting post-mortem she opined that the cause of death of deceased was “Septicemia due to burns”. Accordingly she prepared post-mortem report Exh.23.

**17.** Anusayabai Dashrath Dhage PW-6, mother of the deceased, testified that the deceased was her daughter. After marriage, the accused used to assault her after consuming alcohol. On 15 May 2024, she received a phone call from her daughter Meera informing her that Sarla had been burnt by the accused and was admitted to Ghati Hospital. She went to the hospital and saw that Sarla was burnt all over from her chest. Sarla told her that the accused had come in a drunken state and beaten her. In the morning, he poured petrol on her and set her on fire. Her brother in law Satish then extinguished the fire and brought her to the hospital. She died during treatment.

**18.** Dr.Vernonleo Desousa/PW-7 examined deceased before recording the dying declaration. He stated that on 15.05.2024 police of Shiur police station sought his opinion as to mental state of deceased, accordingly he opined that patient is sound mind and fit to

give statement. Consequently statement of Sarla was recorded in his presence by lady police constable PW1. After taking statement of Sarla he also endorsed his endorsement that 'statement over' and signed it and affixed seal on it. After completion of statement, thumb impression of Sarla and her mother were obtained .

**19.** API Chetan Vasant Rao Ogale PW 8 is investigating officer. He deposed that about investigation carried out by him.

**Submissions -**

**20.** The learned APP N.S.Jagtap submits that the spot of incident and cause of death of deceased Sarla is not in dispute. The relationship of accused and deceased is also not in dispute. He further submits that the dying declaration recorded by PW-1 is credible. He submits that the evidence of PW-1, PW-2, PW-4 and PW-6 are corroborative. He submits that medical officer PW-7 has proved that at the time of recording dying declaration the deceased was oriented. He submits that the written dying declaration of deceased Sarla clearly shows involvement of accused Nitish in the crime. He submits that the mother/PW-6 and sister of deceased/PW-4 are also corroborative in nature and are sufficient to prove the guilt of accused.

**21.** He submits that it settled position of law that the person who is on deathbed will not lie therefore the testimony of PW-1 who has recorded the dying declaration is corroborative and sufficient to prove dying declaration. He submits that although the accused has taken the defence that the deceased committed suicide, no grounds for

the committing suicide are brought on record by the accused; therefore, the accused failed to raise a probable defence. Although the defence witnesses are examined by the accused, DW-1 is the brother of the deceased. Therefore, he is an interested witness; his evidence is not reliable as it is clear that he has deposed to save his brother, from conviction. DW-2 is a neighbour of the accused. His testimony is also not reliable since he has admitted during his cross-examination that he did not go to save the deceased while she attempted to commit suicide. If at all, the deceased could have attempted to commit suicide, the witness would have gone to the deceased to intervene and save her. He submits that DW-2 admitted during cross-examination that he had not seen the deceased while committing suicide. He submits that the accused has set the deceased on fire; therefore, his family members have not lodged any complaint against the deceased . He submits that merely because technical doubt raised by the accused as to the recording of the time of the dying declaration, i.e. 11.00 a.m. to 11.00 p.m, the accused cannot be acquitted. He submits that panch witness/PW-3 has clearly admitted that there was toilet in the house of deceased therefore there was no reason for deceased to go outside for toilet or in the field of accused. With this, it is submitted that the prosecution has proved the case beyond all doubts and hence he prays to convict the accused.

**22.** Per contra, the learned counsel of accused filed his written notes of argument and submits that prosecution case is based on sole evidence of dying declaration but the star witness of prosecution PW-1 who allegedly scribe of dying declaration is not

reliable. She has testified before court that on 15.05.2024 she recorded dying declaration. He culled out following suspicious circumstances for discarding the dying declaration-

**(i)** PW-1 deposed that she recorded dying declaration in between 10.00 to 11.00 a.m. ,however the written dying declaration Exh.18 is allegedly of 11.15 p.m.

**(ii)** PW-1 has admitted during her cross-examination that she had no occasion to go to Ghati hospital after 08.00 p.m. therefore the dying declaration produced on record showing recording of dying declaration at 11.00 p.m. is highly doubtful.

**(iii)** In the dying declaration summary is written by using ward 'तरी' which is generally used for recording the summary of statement therefore it is not possible that deceased will used word 'तरी' for recording her summary.

**(iv)** PW-1 stated that no other relatives were present except mother but there is contradiction in evidence of PW-1 and PW-4 who is sister of deceased ,as she has admitted in cross-examination that, police had been to hospital and they had enquired with deceased in her presence .

**(v)** The mobile number by which PDF was sent is not mentioned. The copy of statement Exh.20 is though produced on record but there is no thumb impression or sign either endorse or mentioned on it.

**(vi)** Dying declaration Exh.18 bears thumb impression of mother of deceased showing her presence. Hence possibility of tutoring cannot be ruled out.

**(vii)** The evidence of investigating officer and other witnesses shows that sister of deceased was also present while recording her dying declaration. So also there are chances of tutoring.

**(viii)** Dying declaration in question is not recorded in question and answer form.

**(ix)** The medical officer/PW-7 stated that he has given endorsement as to mental state of deceased at 10.10 p.m. however the said evidence is in contradiction of evidence of PW-1.

**(x)** The investigation officer has admitted during cross that at the time of incident it was revealed to him that accused was sleeping inside the house.

23. With this, he submits that there are material contradiction with regard to occurrence of incident, recording of dying declaration by PW-1 at the instance of deceased. The dying declaration signed by mother therefore there are serious doubt as to authenticity of said dying declaration. He submits that there are several doubts in the prosecution case. The defence witnesses examined by accused have clearly stated that accused was sleeping inside the house at the time of incident and deceased herself has committed suicide but setting her on fire, therefore probable defence is raised by accused. With this, he prayed to acquit the accused. To buttress his submission he relied on following authorities-

1. Shama Vs. State of Haryana in Criminal Appeal No. 2311/2019 decided on 14.12.2016
2. Dilip Narsingrao Sonawane Vs. The State of Maharashtra Through Chief Secretary in Criminal Appeal No. 668 of 2012 decided on 20<sup>th</sup> April, 2016
3. Chitresh Kumar Chopra Vs. State (Govt.of NCT of Delhi) in Criminal Appeal No. 1473 of 2009
4. Panneerselvam Vs. State of Tamil Nadu in Criminal Appeal No. 1167/2006

5. K.Ramchandra Reddy and Anr. Vs. The Public Prosecutor 1976 AIR 1994
6. Jagbir Singh Vs. State (N.C.T.of Delhi) in Criminal Appeal No. 967/2015

**As to Point no.1 to 4 -**

24. The aforesaid points are interwoven hence I have taken all the points together for discussion.

**Admitted Facts -**

25. That deceased and accused are husband and wife. That their marriage was solemnized prior to four years back prior to incident. That deceased and accused were cohabiting together along-with other family members. The place of incident as well as cause of death is also admitted. Thus, the only crux remains to decide that whether the accused is author of the crime ?.

26. The prosecution case is based on written dying declaration of deceased.

**Legal Position -**

27. The law as regards dying declaration is well settled. The legal principle as regards to dying declaration has been settled by Hon'ble Supreme Court in catena of judgments. The Hon'ble Supreme Court recently in case of ***Rajendra S/o Ramdas Kolhe Vs. State of Maharashtra 2024 LiveLaw (SC) 406***. Summarise the principle relating to dying declaration as follows -

- (i) It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;
- (ii) Each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;
- (iii) It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;
- (iv) A dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;
- (v) A dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;
- (vi) In order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

28. With the aforesaid guidelines, it is required scan whether the dying declaration is authentic and inspires confidence to rely. The court has to satisfy that the dying declaration was rendered voluntarily, it is consistent and credible and it is devoid of any tutoring.

**Scrutiny of Evidence –**

**Dying Declaration recorded by PW-1 Exh.18 -**

29. Police constable Savita Tukaram Warpe/PW1 deposed that, on 15.05.2024 at MLC bearing No. 5395/24 was received by her. Accordingly she went to Ward No.22. She obtained opinion of doctor

vide letter Exh.16 that as to state of health of deceased Sarla. Accordingly, doctor opined that 'patient is currently of sound mind and fit to give statement'.

**30.** Consequently PW-1 recorded the statement of deceased Sarla, wherein, she stated that " she along-with her husband, two daughters, mother-in-law, two brother-in-law resides at Waghla, Tq.Vaijapur, Dist.Chhtrapati Sambhajinagar. Her husband i.e. accused Nitish Sonwane is alcoholic and under influence of liquor he always used to beat her and tell her he don't like her and want to marry someone else. On 15.05.2024 at about 01.00 in the night she was sleeping in house, his husband came, woken her up, by saying her, he don't like her, abused her and assaulted her by kick and fist blows. Out of fear did not informed anyone and fell asleep. Thereafter in the morning at around 07.00 a.m. her husband took her to field behind their house, abused her, threw petrol from petrol bottle on her person, set her on fire by matchbox and thereafter her husband left from there. On hearing shouting of deceased, her both brother-in-laws came there, extinguished her by quilt and took her to Ghati hospital. Due to which her whole body below the chest is burnt and she was undergoing treatment".

**31.** On the basis of aforesaid dying declaration PW1 sent the PDF copy of said statement to PS Shiur and PW-2 registered the offence on the basis of said PDF dying declaration.

**32.** PW1 deposed that she went to Ghati hospital and recorded the dying declaration. She testified in para no.6 that in the morning at about 10 to 10.15 she started recording dying declaration and completed at 11.00 a.m.

**33.** During cross-examination she admitted that she has received the MLC in the morning at 08.00 a.m. thereafter immediately she went to Ghati hospital. She further admitted that she went to Ghati at about 09.00 to 09.30 a.m. she remained there for one to two hours. She stated that after leaving Ghati hospital she went to S.P.Office and she left S.P.Office in the evening at 07.00 to 08.00 p.m. she reached Shiur police station. After 08.00 p.m. she went to her house.

**34.** This testimony of PW1 is contradictory to oral and documentary evidence adduced on record by the prosecution. The doctor/PW-7 has stated that the PS Shiur had issued a letter to him on 15.05.2024; accordingly, he had given his opinion Exh.17. However, the opinion of the doctor recorded vide Exh.16 shows that it was endorsed at 10.10 p.m. and the endorsement as to the completion of the statement on the statement is endorsed at 11.15 p.m. Thus, this vital contradiction in the timing of the recording of the dying declaration goes to the root of the case. If the testimony of PW1 is accepted, it shows that the PW-1 had never been to the hospital in the evening at 10.10 p.m., and if the testimony of the doctor is accepted, then he had given his opinion at 10.10 p.m., which shows that, the mental state of the deceased for recording the dying declaration was not recorded at that time. Thus, the evidence of PW-1 and PW-7 is

contradictory to each other. If really the PW-1 has recorded the dying declaration in the morning, how the documents produced on record are contradictory to her statement is not explained by the prosecution.

35. Although, the doctor's opinion is not *sine-quo-non* for recording dying declaration but as a matter of prudence it is required. On considering PW-1's evidence it clearly shows that she has neither endorsed opinion as to state of mind of deceased nor obtained opinion of doctor before recording dying declaration at 10 a.m. No dying declaration of 10.00 a.m. is produced on record.

36. She admitted during cross that, there is overwriting in the date as 14 to 15. She admitted while recording statement no mistake was committed by deceased while mentioning it. She admitted that in para no.2 of the statement, the date is changed from 14 to 15. It shows that while correcting the date neither the signature of doctor, nor of mother of deceased or PW-1 was endorsed. The said overwriting is done prior to filing it in the court. However, PW-1 has not explained why and under what circumstances she has done overwriting in the said date. Hence, her evidence is not trustworthy and credible.

37. Apart from the above, there are other grounds and material to show that the PW-1 is untrustworthy. She stated that after recording dying declaration she made PDF copy of the same and sent to PS Shiur. She stated that she had talked with PSO Shiur/PW-2 and thereafter she went to S.P.Office. However, PW-2 has admitted during cross-examination that he did not talk to PW-1 after receiving

PDF copy of dying declaration. PW-2 during his cross-examination in para no.2 admitted that, he had received the PDF in the afternoon. These contradictory statement shows that PW-1 either has not recorded the dying declaration in the morning or she had recorded dying declaration which is not the same which is produced at Exh.18. Thus, there is serious doubt about the actual timing of recording of dying declaration. These material contradiction in recording of timing dying declaration creates doubt, whether it is recorded in the morning or in the evening. In view of absence of doctor's certificate in between 10.00 to 11.00 a.m. as to fitness of mind of deceased for giving dying declaration Exh.18 comes under the cloud of doubt.

**38.** As per the statement of PW-1 she has sent the PDF copy of dying declaration in the afternoon, but it appears that she has not immediately returned to police station. Admittedly FIR is registered at 01.00 p.m. and no explanation is offered by the prosecution for the said delay in registering the FIR. If the evidence of PW-1 is accepted then their appears delay in lodging FIR. If at all PW-1 sent the PDF copy immediately then why PW-2 has not registered the FIR immediately ? FIR is registered at 1. pm,thus in absence of any plausible explanation for delay in registering FIR also creates doubt in testimony of PW-1.

**39.** PW1 admitted during cross that she understands the seriousness of case, but, her conduct shows she has casually taken the dying declaration, as she kept the original statement with her and she went to SP office and returned to police station at 8pm. She failed to

handed over the original Dying declaration to police station for registering FIR.

**Inconsistency and Discrepancy in Evidence of PW-4  
and PW-6 –**

**40.** Most materially neither the mother nor the sister of deceased has lodged the FIR either on the same day or thereafter. Admittedly the dying declaration bears signature and thumb impression of mother of deceased. However during cross-examination of mother of deceased/PW-6 she stated that the police had been to hospital at 10.00 p.m. She deposed that police had met her, police had not enquired with her. She stated that, when the police was enquiring deceased at that time she was not sitting there and she was standing at some distance. Thus, the aforesaid statement disclosed that the police had been to hospital in the evening and no police had visited in the morning. She admitted that neither police had enquired with her about the incident nor she furnished the information to police which was informed by deceased to her. Under such circumstances, although the signature of PW-6 is endorsed on dying declaration Exh.18, however the said dying declaration cannot be considered to be narrated in her presence.

**41.** On scrutiny of the evidence of PW-4 and PW-6 who are sister and mother of deceased Sarla it appears that their testimonies also contradictory to the evidence of PW-1. PW-4 has stated in her cross-examination that police had come to hospital at 04.00 p.m. and they were there for half an hour. The police were near deceased for 5

to 10 minutes. Police had not enquired with them about the deceased. They had not given the information to police which was given by deceased to them. She admitted that when the police had arrived in the hospital at that time she and her mother were there together. She admitted that police had obtained thumb impression of her mother on one paper but she was not aware about the contents of that document. Neither police had informed nor she has inquired reason for obtaining thumb impression. She had denied portion marked-A of her statement that “on 15.05.2019 police had enquired with deceased in her presence. The aforesaid admissions shows that the mother of deceased PW-6 was not informed about the contents of the Exh.18 nor PW-4 was aware about the contents of Exh.18. If they were not aware of contents of Dying declaration then endorsement of signature of mother as to recording of Dying declaration in her presence is not credible and trustworthy.

42. Thus, the Exh.18 shrouded with doubt as to contents of dying declaration, timing of dying declaration, fitness of deceased for recording the dying declaration. These all circumstances lead to discard dying declaration since it is unsafe to be acted upon as shrouded by reasonable doubt. The evidence of PW1, PW4, PW6 create a serious dent in the prosecution case and renders the dying declaration highly doubtful and unsafe for reliance.

**Defence of Accused -**

43. Accused has taken specific defence that the deceased has committed suicide by setting herself ablaze . In support of his defence

he has examined DW1 the brother of accused and DW2 who is neighbour of accused. DW1 deposed that On 15.05.2024 at about 06.00 to 06.30 a.m. the deceased had been to for nature's call. He saw that deceased came running towards house by setting herself ablaze at that time the accused was sleeping inside the house. Thereafter he came with blanket and extinguished the fire and thereafter they took her to hospital.

44. During cross-examination he admitted that he had not actually seen deceased in the act of setting herself on fire. He admitted that when deceased was going for nature's call at that time she was having water container in her hand. Except this nothing was in her hand. He admitted that he had not asked her that why she was going for nature's call in the field.

45. DW3, neighbour of accused, testified that, on the alleged date of incident, he witnessed the deceased pouring a substance on her person and setting herself on fire. He stated that upon hearing a shout, he rushed toward her, and the family members of the deceased also arrived to extinguish the flames.

46. Considering the defence of accused, admittedly, the DW1 is brother of accused therefore he is interested witness and DW2 is neighbour of accused therefore he is also interested witness.

47. Irrespective of the defence evidence, the story of prosecution is required to be considered whether it is free from all doubt

and its proved beyond all reasonable doubt. To that respect on scrutiny of evidence in the aforesaid paragraph I have already considering the infirmities and inconsistencies in the evidence of witnesses and for taking doubt in the dying declaration Exh.18. In view of the same, the evidence adduced by prosecution does not inspire confidence as to recording of dying declaration by PW-1. Thus, the dying declaration is shrouded with material doubts and inconsistencies. There is no direct or circumstantial evidence to corroborate the dying declaration.

**48.** It is pertinent to note that the investigation officer has admitted during his cross examination that, at the time of incident accused was sleeping in side the house. The material admission probabalise defence of accused.

**49.** Most materially the evidence of investigation officer shows that there is lacunas in the investigation-

- (i) PW1 has not immediately went to police station after recording the alleged dying declaration, she has sent the PDF.
- (ii) Neither the investigation officer has provided the mobile number by which the said PDF was sent nor there is statement of the PW-1 recorded while sending the said PDF. There is no evidence that when the said PDF was sent and when it was received by the PSO Shiur.
- (ii) The PW1 has not mentioned for what purpose he went to S.P.Office and why she has submitted the said statement belatedly.
- (iii) No explanation is offered by PW-1, PW-2 and IO for registering the FIR belatedly at 01.00 p.m.

- (iv) No statement of independent eye witnesses are recorded by investigating officer though available.
- (v) No explanation offered by PW-1 about overwriting in the para no.2 of dying declaration
- (vi) There is no explanation why the dying declaration of deceased was not recorded by the Executive Magistrate though deceased survive from 15.05.2024 till 01.06.2024.

**50.** The accused have cited judgments of, the Hon'ble Supreme Court and the Hon'ble High Courts. I have appreciated the evidence in the present case in the light of the principles laid down in the said judgments.

**Summing up the discussion –**

**51.** It is clear that dying declarations of deceased are shrouded by doubts and contain vital inconsistencies. The prosecution has failed to remove the said doubts. The inconsistencies are not reconcilable. Hence, the dying declaration of deceased can not be relied and acted upon. There is no other legal evidence against accused. Hence, as per the rule of criminal jurisprudence, accused is entitled for the benefit of reasonable doubts. In view of this, I hold that the prosecution has failed to prove beyond all doubts that accused committed murder or attempt to commit murder of deceased Sarla by setting her ablaze, and caused hurt and abused her. Therefore, accused is liable to be acquitted of the said charge. Hence, point No. 1 to 4 are answered in the negative and following order is passed -

**ORDER**

1. Accused Nitish Vitthal Sonwane is acquitted of the offences punishable under sections 302, 307, 323 and 504 of the Indian Penal Code, vide Section 235 (1) of the Code of Criminal Procedure.
2. His bail bonds are cancelled and his surety is discharged.
3. Accused is directed to furnish P.B and S.B. of Rs.15,000/- in compliance to Section 437-A of the Code of Criminal Procedure.
4. One black colour full pant and one faint pink colour full sleeves shirt, being worthless, be destroyed, after the period of appeal is over.

(The judgment dictated and pronounced in open court.)

Date: 06.04.2026

(Smt.S.K. Upadhyay)  
Addl.Sessions Judge,  
Vaijapur.

**CERTIFICATE**

I affirm that the contents of this PDF file judgment are same, word to word, as per the original judgment.

Name of the Stenographer : R.V.Kulkarni

Name of the Court : Smt. S. K. Upadhyay, District Judge-1, Vaijapur.

Date of deliver judgment : 06.04.2026

Judgment checked

by the presiding officer on : 06.04.2026

Judgment signed on : 06.04.2026

Judgment uploaded on : 06.04.2026

