

(2008) 05 GUJ CK 0011
In the Gujarat High Court
Case No : Criminal Appeal No. 238 of 1999

Bhanubhal Shanabhai Zala APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313 , 344
Penal Code, 1860 (IPC) — Section 302, 307, 498A

Citation : (2008) CriLJ 3828

Hon'ble Judges : R.P. Dholakia, J;K. S. Jhaveri, J

Bench : Division Bench

Advocate : G.M. Amin, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholakia, J.—This Appeal is directed against the judgment and order dated 5-2-1999 passed by the learned Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No. 142 of 1998 whereby, the appellant, original accused, was convicted for the offences punishable u/s 498A and 302 of the Indian Penal Code (for short, "the I.P.C"). For conviction u/s 498A, I.P.C., the appellant was sentenced to undergo rigorous imprisonment for three years with fine of Rs. 5,000/- and in default of payment of fine, simple imprisonment for a further period of six months; while for conviction u/s 302, I.P.C., the appellant was sentenced" to undergo rigorous imprisonment for life with fine of Rs. 5,000/- and in default of payment of fine, simple imprisonment for a further period of two years. Both the sentences were ordered to run concurrently.

2. The facts in brief, as emerging from the record, are as under;

2.1 On 6-3-1998, at around 11.00 hrs., while Bhuriben, the wife of the appellant, original accused/was in her house, the appellant came in a drunken condition and picked up a quarrel with Bhuriben. During that process, the appellant, original accused, closed the doors of the house from the inside, poured kerosene

on Bhuriben and thereafter, set her ablaze. As a result thereof, victim-Bhuriben sustained severe burn injuries of the 1st, 2nd and 3rd degrees. During the interregnum period, the appellant, original accused, fled the scene of offence.

2.2 On hearing the shouts of the victim, a crowd gathered at the scene of offence. The relatives of the appellant, original accused, took the victim to a private Hospital named "Versha Surgical Hospital", situated in Odhav area of Ahmedabad City. In the said Hospital, the victim was given necessary medical treatment. Here, it is pertinent to note that though it was a medico-legal case, neither the relatives of the appellant, original accused, nor the Doctor concerned had informed about the said incident to the police authority. When the father of the victim came to know about the said incident through his nephew, he and his wife came to the Hospital where the victim was admitted. At that time, the victim was totally unconscious.

2.3 On the next day, i.e. 7-3-1998, when the victim became conscious, her parents inquired from her regarding the said incident. At that time, the victim informed them that on 6-3-1998, at around 11.00 hrs., the appellant, original accused, came to the house in a drunken condition and picked up a quarrel with her and during that process, he closed the doors of the house, sprinkled kerosene on her and thereafter, set her ablaze. On hearing the same, the father of the victim decided to file a complaint as it was a serious offence. On the next day, at around 10.00 hrs., the Doctor of said "Varsha Surgical Hospital" gave a telephonic intimation regarding the admission of the victim to his Hospital to Odhav Police Station, which was noted down by the P.S.O., who was on duty at the relevant point of time, in the Station Register. The P.S.O., in turn, handed over a "yaadi" to P.S.I. -- Ghanshyambhai Tribhovanbhai Pandya for the purpose of carrying out necessary investigation. The said P.S.I. went to "Varsha Surgical Hospital" and made necessary preliminary inquiry. He noted down the complaint given by the father of the victim and also sent a "yaadi" to the concerned Executive Magistrate for recording the dying declaration of the victim. As the incident had taken place outside the jurisdiction of Odhav Police Station, the complaint was registered as C.R. No. "O" of 1998 of Odhav Police Station u/s 307, I.P.C.

2.4 On the same day, i.e. on 8-3-1998, between 12.10 hrs. - 12.30 hrs., the dying declaration of the victim was recorded by the Executive Magistrate after following due procedure. The complaint given by the father of the victim was sent to Kathlal Police Station for the purpose of registering the offence, as the alleged offence had taken place within the jurisdiction of Kathlal Police Station, and ultimately, it came to be registered as Kathlal Police Station I. -- C.R. No. 40 of 1998 u/s 307, I.P.C. investigation into the alleged offence was handed over to P.S.I. -- Harendrasinh Kiritsinh Rana of Kathlal Police Station. In the meanwhile, as the condition of the victim had started to deteriorate, she was shifted to L.G. Hospital, Ahmedabad at around 14.00 hrs. on 8-3-1998. At L.G. Hospital, the victim was given necessary medical treatment.

2.5 On 9-3-1998, as the condition of the victim had improved, the further statement of the victim was recorded by the P.S.I. of Kathlal Police Station, after following due procedure. Thereafter, the Investigating Officer went to the scene of offence and made necessary inquiry. A "panchnama" with respect to the place of incident was prepared in the presence of "panchas". Necessary "muddamal" articles were collected. As cogent evidence was found against the appellant, he was arrested on 9-3-1998. Arrest "panchnama" was prepared in the presence of "panchas" and thereafter, the appellant was sent to judicial custody.

2.6 On 16-3-1998 the victim succumbed to the injuries. Inquest "panchnama" was prepared in the presence of "panchas". "Marnottar" form was filled up and necessary arrangements were made for sending the dead body for performing post-mortem. A note was sent to the concerned Magistrate for the purpose of adding offence u/s 302, I.P.C. in the complaint. Further investigation was carried out and statements of several witnesses were recorded. The "muddamal" articles so collected were sent to F.S.L. for examination along with a forwarding letter. On receipt of the F.S.L. Report, Post-mortem Report and other Reports, they were kept in the investigation file.

2.7 On completion of investigation, charge-sheet was filed before the Court of learned J.M.F.C., Kapadvanj. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the District and Sessions Court, Kheda at Nadiad and it was numbered as Sessions Case No. 142 of 1998. The case was then transferred to the learned Addl. Sessions Judge for disposal on merits. On production of the appellant, original accused, the learned Addl. Sessions Judge framed the charge and as the appellant, original accused, pleaded not guilty to the charge levelled against him, trial was conducted.

3. In order to prove the guilt of the appellant, original accused, the prosecution has examined in all eleven witnesses, namely, PW-1 Pramod Hajarilal Jain at Exhibit-10 is the Executive Magistrate who recorded the dying declaration of the victim, PW-2 Dr. Yogendra Dashratil Shah at Exhibit-13 is the Doctor in whose Hospital the victim was given treatment for the period from 6-3-1998 -- 8-3-1998, PW-3 Bhikhaji Mangaji at Exhibit-19 is the father of the victim as also the complainant in this case, PW-4 Ghanshyambhai Tribhovanbhai Pandya at Exhibit-22 is the P.S.I. of Odhav Police Station who had noted down the complaint on 8-3-1998, PW-5 Rejeshkumar Bhikhabhai Zala at Exhibit-24 is a "panch" witness who has been declared "hostile" by the Court below, PW-6 Ranjitsinh Virsinh Gohel at Exhibit-28 is the Executive Magistrate who performed the inquest "panchnama", PW-7 Dr. Manish Tulsidas Kapadia at Exhibit-32 is the Medical Officer who performed the Post-mortem of the deceased, PW-8 Dr. Dharmila Gunwantbhai Shah at Exhibit-34 is the Medical officer who was in-charge R.M.O. at L.G. Hospital, PW-9 Harendrasinh Kiritbhai Rana at Exhibit-36 is the Investigating Officer, PW-10 Chatrasinh Mathurbhai at Exhibit-41 is the P.S.O. of Kathlal Police Station and PW-11 Dr. Madhu Vitthaldas at Exhibit-43 is the Medical Officer of L.G. Hospital who had also given necessary treatment to the

victim at the relevant point of time.

3.1 The prosecution also relied upon several documentary evidence, more particularly, the complaint at Exhibit-20, the statement of the victim recorded by the police at Exhibit-37, the Certificates issued by Varsha Surgical Hospital at Exhibits-14 and 15, the Post-mortem Report at Exhibit-33, the telephone "wardhi" recorded by PW-2 at Exhibit-23, the forwarding letter to the F.S.L. at Exhibit-38, the Receipt of the F.S.L. at Exhibit-39, the F.S.L. Report at Exhibit-40, the dying declaration at Exhibit-12, the "yaadi" to record the dying declaration at Exhibit-11, the School Leaving Certificate at Exhibit-21 and the medical case-papers of the victim at Exhibit-35.

3.2 On submission of the closing purshis, the further statement of the appellant, original accused, u/s 313 of the Cr.P.C. was recorded. After hearing learned Counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment whereby, the appellant, original accused, was convicted u/s 498A and 302, I.P.C. While delivering the said judgment, the Court below also issued Notice u/s 344, Cr.P.C. against PW-2 in the said Sessions Case (i.e. the appellant of Criminal Appeal No. 240/1999) to show cause as to why he should not be punished for giving/fabricating false evidence in the proceedings of the said case. Being aggrieved by the impugned judgment and order, the appellant, original accused, has approached this Court by way of this Appeal.

4. Mr. G.M. Amin, learned Advocate for the appellant, original accused, has submitted that from the evidence on record, it is established beyond doubt that the victim died an accidental death. He has submitted that even if the case of the prosecution is believed to be true, there is no eye-witness to the alleged incident in question. Hence, the Court below has committed, serious error in convicting the appellant, original accused, for the alleged offence.

4.1 Learned Advocate has contended that the complaint at Exhibit-20 is an after-thought filed only with a view to falsely implicate the appellant, original accused, in the alleged offence since the same has been filed after a long delay. He has submitted that the said delay caused in filing the complaint has also not been explained by the prosecution.

4.2 Learned Advocate has further contented that the dying declaration of the victim at Exhibit-12 cannot be said to be reliable and trustworthy inasmuch as it does not get support from any other oral or documentary evidence on record, more particularly, the police "yaddi" sent to the Executive Magistrate at Exhibit-11 and the entry made by the P.S.O. of Odhav Police Station in the Station Diary at Exhibit-23, which are important pieces of evidence. Therefore, the dying declaration requires sufficient corroboration. He has, therefore, submitted that looking to the entire oral as well as documentary evidence available on record, this is a fit case wherein the appellant, original accused, deserves to be acquitted from the alleged offence by granting him the benefit of doubt.

5. Mr. H.L. Jani, learned APP appearing on behalf of the respondent-State, has submitted that the oral evidence on record in the form of deposition of the complainant - PW-3 Bhikhaji Mangaji at Exhibit-19 and the documentary evidence on record in the form of dying declaration at Exhibit-12 and the further statement of the victim at Exhibit-37, establish beyond doubt the guilt of the appellant, original accused. Hence, the Court below was completely justified in convicting the appellant, original accused, for the alleged offence.

6. We have heard learned Counsel for the respective parties and have perused the entire oral as well as documentary evidence available on record. The fact that the victim died as a result of the burn injuries is not disputed by the learned Advocate for the appellant, original accused. Even otherwise, the said aspect is established from the medical evidence on record in the form of Postmortem Report at Exhibit-33, the Inquest "panchnama" at Exhibit-30 and the oral evidence of the Doctor (PW-7 Dr. Manish Tulsidas Kapadia at Exhibit-32) who has performed the post-mortem. The Court below has discussed the said aspect in detail in the impugned judgment. We are in complete agreement with the reasonings given by the Court below qua the same and, therefore, do not find it necessary to discuss the same in detail in this judgment and accordingly, hold that the victim died a homicidal death.

7. The prosecution has examined the father of the victim-Bhikhaji Mangaji, who is also the complainant, as PW-3 at Exhibit-19. In his deposition, he has stated that at about ten days prior to the date of the alleged incident, the victim had come to his house and informed him that the appellant had been extending mental as well as physical torture to her and that the appellant used to quarrel with her after consuming liquor. Some days later, the appellant came to his house along with his relatives and convinced him that henceforth he would not consume liquor and that he would also not physically and mentally harass the victim. On account of the said assurance given by the appellant and his relatives, he sent the victim to her matrimonial house. He has further deposed that on the date of the alleged incident, his nephew informed him that the victim has sustained burn injuries and that she has been admitted in a Hospital at Ahmedabad. Therefore, he along with his wife and elder son went to the said Hospital. When they reached the Hospital at around 2345 hrs. they noticed that the victim had sustained burn injuries on major part of her body. On the next day, when the victim became conscious, he inquired from her about the said incident. At that time, the victim informed him that the appellant, after consuming liquor, had quarrelled with her and thereafter, set her ablaze after pouring kerosene on her. He has further deposed that after making necessary inquiry from the victim, he filed a complaint before Odhav Police Station, which was registered as Odhav Police Station 1 - C.R. No. "0" of 1998.

7.1 This witness has been cross-examined at length before the Court below. From his cross-examination, it has come out that the victim had sustained the burn injuries not on account of the alleged malfunction of the cooking stove kept

in her house, as it has come on record that the said stove was found to be in a perfectly good condition when the complainant had visited her house on 7-3-1998. It has also come out that during the entire period of hospitalisation of the victim and until her death, the appellant had not visited her. Nothing contrary has come out from his cross-examination, which may lead us to believe the evidence led by this witness to be untrue or unreliable.

8. The evidence led by the complainant at Exhibit 19 gets support from the complaint at Exhibit-20 filed on 8-3-1998. Nothing contradictory has come on record and the averments made therein, wholly support the say of the complainant before the Court below at Exhibit-19 in toto. It is true that there is a delay of one day in filing the complaint. It is a matter of record that the victim was admitted in the Hospital on 6-3-1998 at around 1730 hrs. and that when the complainant and his other family members reached the Hospital in question, the victim was unconscious. The said fact is also established from the evidence of PW-2 Yogendra Dashrathlal Shah at Exhibit-13, in whose Hospital the victim was admitted, at the first place, for necessary treatment. Thereafter, on 7-3-1998, when the victim became conscious, she narrated the history of the incident to the complainant in detail and, on the next day, i.e. on 8-3-1998, the complaint was filed.

8.1 Looking to the facts and circumstances of the case, we do not find that there was any unreasonable delay in filing the complaint which may create doubts in our minds about its genuineness. Hence, the contention raised by the learned Advocate for the appellant that the complaint has been filed after a long delay is devoid of any merits and is, therefore, rejected.

9. The other important evidence is of PW-4 Ghanshyambhai Tribhovanbhai Pandya at Exhibit-22, who was serving as a P.S.I., Odhav Police Station, at the relevant point of time. In his deposition, he has categorically stated that on 8-3-1998, while he was discharging his duties, he received a "yaddi" from the P.S.O. regarding the admission of the victim at "Varsha Surgical Hospital". He has further deposed that in pursuance of the said "yaadi", he went to "Varsha Surgical Hospital" and inquired about the condition of the victim from the concerned Doctor. On inquiry, he realized that the dying declaration of the victim was required to be recorded. Therefore, he prepared "yaadi" (Exhibit-11), obtained the endorsement of the concerned Doctor regarding the condition of the victim on it at about 11.00 hrs. and thereafter, sent the same to the Executive Magistrate for the purpose of recording the dying declaration. In the meantime, he also recorded the complaint of the father of the victim. Some time later, the Executive Magistrate arrived at "Varsha Surgical Hospital" and recorded the dying declaration of the victim. Thus, from the evidence of this witness, i.e. PW-4 at Exhibit-22, it has come out that he had prepared the "yaadi" (Exhibit-11) for the purpose of calling the Executive Magistrate for recording the dying declaration of the victim and that on the said "yaadi" (Exhibit-11) he had also obtained the endorsement of the concerned Doctor regarding the condition of the

victim along with the timing.

10. Another important evidence which supports the case of the prosecution is the dying declaration of the victim at Exhibit-12. The said dying declaration has been recorded by the Executive Magistrate - Pramod Hajarilal Jain (PW-1 at Exhibit -10) on 8-3-1998. In the said dying declaration, more particularly, in reply to Question No. 13, the victim has stated as under:

Ten days ago, I went to my parental house on account of disconcert. Thereafter, my husband came to pick me up and assured me that henceforth he would not consume liquor. On the said assurance, he brought me back to the matrimonial home. Yesterday, my husband came home in a drunken condition. When I reminded him about not consuming liquor, a quarrel took place and the door was closed. Thereafter, my husband poured kerosene on me from a black-handled Can and set me ablaze. In this way, he tried to kill me.

10.1 From the above, it is evident that the victim has stated in unequivocal terms the entire incident in detail along with the role played by the appellant. It may be noted that the dying declaration of the victim has been recorded after following due procedure of law. Thus, it is established from the record that before recording the dying declaration, the Executive Magistrate has inquired from the concerned Doctor as to whether the victim is in a condition to give such declaration or not. The said Doctor has certified that the victim was in good mental condition to give such declaration at the relevant point of time. Thus, only after ascertaining the medical condition of the victim from the concerned Doctor, the dying declaration was recorded. The victim has clearly narrated the history as to how she had sustained the burn injuries along with the role played by the appellant.

10.2. Here, it is pertinent to note that on the "yaddi" (Exhibit-11), the time which has been noted by the concerned Doctor is "12.10 p.m.". thus, it is a matter of record that on the said "yaadi" (Exhibit-11), there are two endorsements of the concerned Doctor, viz. (i) At about 11.00 am when the P.S.I. (PW-4 at Exhibit-22) had obtained an endorsement on it regarding the condition of the victim and (ii) At about 12.10 p.m. when the Executive Magistrate arrived at "Varsha Surgical Hospital" and inquired from the concerned Doctor regarding the condition of the victim and made an endorsement to that effect on it. The said fact has also been deposed by the Executive Magistrate in his deposition as PW-1 at Exhibit -10. Over and above, it is also established from the evidence of the Executive Magistrate that before recording the dying declaration, he had also inquired from the victim regarding her ability to give the dying declaration and only after getting a satisfactory reply, he has recorded the same.

10.3 The Executive Magistrate (PW-1 at Exhibit-10) has been cross-examined at length before the Court below. However, nothing contrary has come out from his cross-examination which may lead us to believe the evidence led by this witness

to be untrue or unreliable. We have carefully scrutinized the dying declaration and are of the considered opinion that the same is not the result of any tutoring, prompting or imagination. Therefore, we believe that the dying declaration is completely reliable and trustworthy.

11. The dying declaration of the victim at Exhibit-12 gets support from the further statement of the victim at Exhibit-37 recorded by the P.S.I. of Kathlal Police Station on 9-3-1998 at L.G. Hospital, which can also be treated as a dying declaration. In the said statement also, the victim has categorically narrated about the entire incident in detail along with the role played by the appellant. Thus, the dying declaration at Exhibit 12 gets support from the further statement of the victim at Exhibit-37 and also the oral evidence of the complainant-JBhikhaji Mangaji (PW-3 at Exhibit-19) and PW-9 Harendrasinh Kiritsinh Rana at Exhibit-6.

11.1 Thus, on three different occasions, i.e. firstly, before the complainant, secondly, in the form of dying declaration at Exhibit-12 and thirdly, in the form of further statement at Exhibit-37, the victim has stated about the entire incident in detail. On all the aforesaid three occasions, the victim has categorically stated about the entire incident along with the role played by the appellant. They are consistent and support each other on all material aspects.

12. At this juncture, it would be relevant to refer to the evidence of the Doctor (Dr. Yogendra Dashrathlal Shah) (PW-2 at Exhibit-13) in whose Hospital the victim was admitted at the first place immediately after the alleged incident had taken place. In his deposition, the Doctor has stated that the victim was brought to his Hospital by her relatives on 6-3-1998 at around 17.30 hrs. and on examining her it was found that she had sustained about 50%-55% burn injuries on the body as a whole. He has further deposed that when he inquired from the victim about the history of the incident, she informed him that she had sustained the burn injuries as a result of an accident. The victim had sustained burn injuries on the face, chest, stomach, legs and the back portion of her body. He has categorically deposed that the victim had not sustained any burn injuries on both the hands. He has further deposed that on 6-3-1998 he had instructed the relatives of the victim to inform the police about the said incident. However, they could not inform the police and, therefore, on 8-3-1998, at around 09.30 hrs. he gave a telephonic intimation about the said incident to Odhav Police Station. He has further deposed that for the purpose of recording the dying declaration of the victim, the Executive Magistrate had arrived at his Hospital at about 12.10 hrs. and that on an inquiry being made from him by the Executive Magistrate regarding the condition of the victim, he made an endorsement on the "yaadi" Exhibit-11 that the victim was in conscious state of mind and that she could depose. This witness has identified the said endorsement made by him on the "yaadi" at Exhibit -11 before the Court below. He has also proved the Certificates at Exhibits - 14 & 15 and the case papers of the victim at Exhibit-16.

12.1 Before proceeding further, we would like to refer to the said Certificates at

Exhibits-14 & 15 purported to have been issued by this witness on 18-3-1998 & 20-3-1998 respectively and the alleged history given by the victim at Exhibit-17 dated 6-3-1998. The said documents read as under:

EXHIBIT-14 Date : 18-3-1998 Certificate This is to certify that Bhuriben Bhanubhai Zala 50 to 55% burns admitted to my clinic from 6-3-1998 (5.30 p.m.) to 8-3-1998 (2.00 p.m.) and was shifted elsewhere on 8-3-1998 in good condition. --sd/--

EXHIBIT-14 Date : 20-3-1998 Certificate (Treatment Sheet)
Odhav Police informed 10.30 a.m. D.D. taken on 8-3-1998 at 12.00 to 12.30 p.m. --Sd/-- Seal

EXHIBIT-14 Date : 6-3-1998 I, Bhuriben Bhanubhai Zala. in my full consciousness, say that as the corner of my saree caught fire while preparing tea on a primus, I sustained burn injuries. Sir, kindly give me good treatment for the future of my children. --Sd/-- Bhuriben

12.2. This witness (PW-2) has been cross-examined at length before the Court below. From his cross-examination, it has come out that the document at Exhibit-17, purported to have been executed by the victim on 6-3-1998, was produced on record only at the time of his cross-examination before the Court below. This witness has not even made a mention about the said document at Exhibit-17 in his examination-in-chief before the Court below.

12.3 We have scrutinized the said document at Exhibit-17 in light of the other evidence on record, more particularly, the documentary evidence in the form of Inquest "panchnama" at Exhibit 13 and the Postmortem Report at Exhibit-33 and the oral evidence in the form of depositions of the Executive Magistrate (PW-1 Pramod Hajarilal Jain at Exhibit-10) and the Medical Officer who performed the post-mortem of the deceased (PW-7 Dr. Manish Tulsidas Kapadia at Exhibit-32). In the Inquest "panchnama" at Exhibit-13, it has been categorically mentioned that both the hands of the victim were completely burnt. The said aspect gets support from the evidence of the Executive Magistrate-Pramod Hajarilal Jain (PW-1 at Exhibit-10) who has categorically deposed that both the hands of the victim were completely burnt. In the Post-mortem Report at Exhibit-33, more particularly, in Column No. 7 therein, it has been mentioned that there was violet ink stains on the right big toe. The said aspect gets support from the evidence led by the Medical Officer - Dr. Manish Tulsidas Kapadia (PW-7 at Exhibit 32) who has categorically deposed that at the time of performing post-mortem, violet ink was present on the right big toe of the victim and that it appeared that the right big toe impression of the victim has been taken.

12.4 The above evidence leads us to the one and only conclusion that in the alleged incident, the victim had sustained severe burn injuries on a major part of her body, including both the hands, viz., palm and all five fingers, which would have completely left her handicapped, so far as her ability to put any signature/thumb mark on anything with any of her hands is concerned. However, the

Doctor, i.e. PW-2 at Exhibit-13, has categorically deposed in his examination-in-chief that both the hands of the victim were not burnt. From the cross examination, the intention of this witness has been established. It transpires that for the purpose of producing the so-called dying declaration at Exhibit-17 alleged to have been taken on 6-3-1998, a situation was attempted to be created by PW-2 to show that both the hands, viz. palm and all five fingers, of the victim were alright and that they had not sustained any burn injuries. The said document at Exhibit-17 was produced on record of the Court below, for the first time, only during the stage of cross-examination though in his sub-conscious mind he was very well aware of the fact that both the hands, viz. palm and all five fingers, of the victim had sustained severe burn injuries. Unfortunately, the said false and concocted story brought forth by PW-2 did not hold any ground in view of the evidence discussed hereinabove.

12.5. It would not be out of place to state that if the document at Exhibit-17 was a genuine one then it would have definitely found place in the Certificate at Exhibit-15 since in the said document at Exhibit-15, every single aspect pertaining to the treatment of the victim has been narrated. The "wardhi" at Exhibit-23 also does not disclose any time or date. The records of L.G. Hospital, Ahmedabad show that the victim was admitted in the Hospital on 8-3-1998 at around 14.35 Hrs". The Court below has dealt with every aspect in detail and has arrived at the conclusion that this witness (PW-2) had come to the Court for the purpose of helping out the appellant by intentionally creating false document and deposing false evidence. We are in complete agreement with the said finding arrived at by the Court below and accordingly, hold that PW-2 (Dr. Yogendra Dashrathal Shah) has fabricated false document (Exhibit-17) and has led false evidence before the Court below.

13. The law on the subject of admissibility of dying declaration in evidence is well-settled. In the case of *Vikas and Ors. v. State of Maharashtra* reported in AIR 2008 SCW 915 the Apex Court has extensively dealt with the question of admissibility of dying declaration. In paragraph 36 of the said decision, the Apex Court has held as under:

36. The Court, referring to earlier case law, summed up principles governing dying declaration as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(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.

(ix) Normally the Court in order to satisfy whether deceased was in fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

It has been further held therein that where a "dying declaration" is recorded by a competent Magistrate, it would stand on a "much higher footing" and the rule requiring "corroboration" is merely a rule of prudence.

14. Apart from the above, the conduct of the appellant is also required to be noted. From the evidence on record, it has come out that during the entire period of hospitalisation of the victim, the appellant had not visited her. It has also come out that the appellant had not even attended the funeral ceremony of the deceased. If the victim would have died an accidental death, then the appellant would have definitely been in the company of the victim right from the time when she was admitted to "Varsha Surgical Hospital" on 6-3-1998. However, that is not the case. Apart from that the fact that PW-2 Dr. Yogendra Dashrathlal Shah at Exhibit 13 had tried to help the appellant by creating false/fabricated documents/certificates, which has been proved beyond doubt, further establishes the guilt of the appellant.

15. The F.S.L. Report at Exhibit-38 also supports the case of the prosecution. From the said Report, it is established that kerosene particles were found on the "mud", match-box and the gallon seized from the place of incident as "muddamal" articles, which further establish the guilt of the appellant.

16. In view of the above discussion, we are of the opinion that the prosecution has been able to prove the guilt of the appellant beyond doubt.

17. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and therefore, find no reasons to interfere in this Appeal. Hence, the Appeal deserves to be rejected.

18. For the foregoing reasons, the appeal is dismissed. Office is directed to send the Records and Proceedings to the trial Court concerned forth with.