

(2017) 06 GUJ CK 0045
In the Gujarat High Court
Case No : 544 of 2012

KIRITBHAI UDESINH RAJPARMAR

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 09-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 374\(2\)](#) - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 307](#) - Punishment for murder - Attempt to murder

Citation : (2017) 06 GUJ CK 0045

Hon'ble Judges : Abhilasha Kumari, A.J. Shastri

Bench : Division Bench

Advocate : PH BUCH, RONAK RAVAL

Judgement

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973, has been preferred against the judgment and order dated 12.10.2010, passed by the learned Additional Sessions Judge, Second Fast Track Court, Nadiad, in Sessions Case No.78/2010, whereby the appellant accused has been convicted of the offence under Section 302 of the Indian Penal Code, 1860 and sentenced to imprisonment for life.

2. The case of the prosecution, based upon the complaint dated 06.03.2010 (Exhibit 46), given by Lalitaben, wife of Kiritsinh Udesinh Rajparmar, aged 32 years, who would hereinafter be referred to as "the deceased", is as follows. 2.1 The deceased was residing with her husband Kiritsinh Udesinh Rajparmar (hereinafter referred to as "the accused"), and children. Her husband was an agricultural labourer. The deceased had been married for a span of twelve years. The deceased was also doing the work of an agricultural labour and on 05.03.2010, she had gone for the said purpose. After returning home, she started cooking the evening meal. While she was cooking, the accused came and asked angrily why the meal was not ready. Thereafter, he started abusing her. The deceased has stated that the accused used to habitually consume liquor.

While the deceased was cooking "Rotla" (Chapati) on the "Chula" (log stove), the accused took out a burning log from the stove and said that he would burn the deceased alive. Thereafter, he took a "Khadia" (kerosene lamp) and poured kerosene from it upon the deceased and set her ablaze with the burning log. The clothes of the deceased caught fire and she was badly burnt on her face, chest, back and hands. The motherinlaw of the deceased extinguished the fire by wrapping her in a quilt. The deceased was shifted to Nadiad Civil Hospital, from where she was referred to the Civil Hospital, Ahmedabad.

2.2 It is categorically stated in the complaint by the deceased that she is fully conscious. She has further stated that the accused often quarrelled with her and beat her up for household work and used to say that he would kill her.

3. The FIR was initially registered for the offence under Section 307 of the Indian Penal Code, 1860. However, after the death of the deceased on 12.03.2010, a chargesheet was submitted for the offences under Sections 307 and 302 of the Indian Penal Code. As the offence with which the accused was charged was exclusively triable by the Court of Sessions, the learned Second Judicial Magistrate, First Class, Nadiad, committed the case to the Sessions Court, Kheda. The charge was framed at Exhibit 7. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as seventeen witnesses and relied upon seventeen documents in order to bring home the charge against the accused. The accused did not examine any witness or produce any documentary evidence. After considering the oral and documentary evidence on record, the Sessions Court arrived at the conclusion that there is sufficient material on record to prove the charge against the accused. It, therefore, convicted the accused and sentenced him to life imprisonment, relying mainly upon the dying declaration of the deceased.

4. In defence of the accused, Mr. P. H. Buch, learned counsel for the appellant has made the following submissions before this Court: (a) There is no eyewitness of the incident though it is the case of the prosecution that all family members were staying in a joint family. (b) There is no independent witness. The prosecution has examined near relatives of the accused and deceased, but none of them have supported the case of the prosecution. (c) It is not the case of the prosecution that the accused had been inflicting mental and physical cruelty upon the deceased earlier. No complaint has been filed in this regard even before the incident. (d) The only piece of evidence on which the prosecution has relied is the dying declaration of the deceased, which is a weak piece of evidence. There is no cogent, corroborative evidence to support the dying declaration, therefore, it ought not to have been relied upon. (e) As per the oral evidence that has come on record, the dying declaration has been dictated by PW6, motherinlaw of the deceased. This aspect has been corroborated by PW7, sisterinlaw (Jethani) of the deceased. Both these witnesses have stated that the deceased was not conscious in the hospital. The dying declaration, therefore, is neither believable nor trustworthy, as it has not been given by the deceased herself. Besides this, the

dying declaration is not supported by any independent witness. (f) The depositions of the Executive Magistrate, Doctors and the Police witnesses have been given as a part of their official duties. The accused cannot be convicted and sentenced only on the strength of their evidence in the absence of any other corroborative evidence. (g) Even the presence of the accused at the scene of the incident is doubtful. Nobody has stated that the accused was present, therefore, the role alleged to have been played by the accused cannot be taken as the truth. (h) The case of the prosecution is that the accused was accustomed to consuming liquor. However, no complaint regarding this aspect has been filed in the twelve years span of marriage. (i) It is the case of the prosecution that the accused poured kerosene from a lit kerosene lamp upon the deceased. However, it is in evidence that there was kerosene in the lamp, which belies the version of the deceased. (j) On the above grounds, the present is a clear case for the acquittal of the accused. (k) Alternatively, it is argued that, at the most, it can be said that it is a case under Section 304 of the Indian Penal Code, 1860, and the punishment imposed ought to have been for culpable homicide not amounting to murder and not for the offence of murder.

5. On the other hand, in support of the case of the prosecution, Mr. Ronak Raval, learned Additional Public Prosecutor has submitted that the version of the deceased, from the time she narrated the case history in the Hospital upto the recording of the dying declaration, is clear and consistent. The deceased was conscious when the case history was recorded in the Hospital. She was also conscious when she gave the complaint and when the dying declaration was recorded. This aspect has been noted by the Executive Magistrate in the dying declaration and has been stated by the complainant, herself, in the complaint. Hence, the versions of PW6 and 7 that they have dictated the dying declaration and it has not been given by the complainant, cannot be believed. 5.1 It is further submitted that though the prosecution witnesses, who are the relatives of the deceased and accused, have turned hostile, however, the consistency of the version of the deceased in the dying declaration is sufficient to maintain the order of conviction which has rightly been passed by the Sessions Court. 5.2 In support of his submissions, learned Additional Public Prosecutor has placed reliance upon the judgment of this Court in the case of Janakbhai Ramjibhai Parmar and others Vs. State of Gujarat, reported in 2016 (3) GLH 772. He has further relied upon the judgments of the Supreme Court referred to in the above judgment in the cases of Atbir Vs. Government of NCT of Delhi, reported in 2010 (9) SCC 1 and Lakhan Vs. State of M.P., reported in 2010 (8) SCC 514.

6. Both learned counsel for the accused and the learned Additional Public Prosecutor have taken the Court minutely through the entire evidence on record, which we shall discuss at the appropriate stage.

7. We would first like to deal with the situation reflected in the Jail remarks dated 08.05.2017 pertaining to the accused, signed by the Incharge Superintendent, Vadodara Central Jail. It emerges from the said Jail remarks that the accused is

absconding since 21.12.2015.

8. We are, therefore, required to address the issue whether we can hear and decide the present appeal when the accused is absconding.

9. In *Nirav Devnarayan Shukla and others Vs. State of Gujarat*, reported in 2016 (2) GLH (F.B.) 128, a Full Bench of this Court, after taking into consideration several judgments of the Supreme Court, has arrived at the following conclusion : "16. In view of the ratio laid down by the Apex Court, we are of the opinion that the High Court while dealing with a conviction appeal wherein convict/advocate is/are not available, following procedure is required to be considered at the time of final hearing:

(i) If the Advocate appearing for the appellant convict is present and is ready to proceed with the appeal, the Court has to decide the same on merits and reasoned judgment is to be delivered even if the convict is absconding. It is needless to say that the convict should always be subjected to consequences of his abscondance.

(ii) If the convict is absconding and his advocate is absent, and if the convict has jumped the bail/ temporary bail granted by the High Court, High Court itself, shall take recourse provided under the provisions of Criminal Procedure Code to secure the presence of absconding convict and can issue nonbailable warrant, passing orders of attachment of his property declaring him proclaimed offender, etc. under sections 82, 83, 84 and 85 of the Code of Criminal Procedure. After exhausting all possible effort if the convict could not be traced out and if the High Court is satisfied and is of the opinion that the convict is recalcitrant and has shown total disrespect to the orders passed by the High Court and has jumped the bail/ temporary bail, the High Court can exercise its inherent power u/s.482 of the Code and can dismiss the appeal.

(iii) If the convict was released pursuant to orders passed by the concerned Department of the State/ Jail authority (like furlough leave, etc.) and is not available at the time of hearing of the appeal, the jail authority shall submit a detailed report to the High Court about the steps undertaken by the concerned Department/Jail authority to secure the presence of the absconding convict. If the High Court is satisfied with the said report and comes to the conclusion that the convict is recalcitrant and has shown disrespect to the judicial system, his appeal can be dismissed.

(iv) If the appeal is dismissed on the ground of nonavailability of convict and subsequently if the convict surrenders or is arrested, he may file application for restoration of his appeal for hearing the same on merits."

(emphasis supplied)

10. Applying the principles formulated by the Full Bench to the present case, we find that the case in hand is covered by Point No.1. Learned advocate for the appellantaccused is present and has willingly proceeded with the appeal,

therefore, we are in a position to decide the appeal on merits, even though the accusedappellant is absconding. Hence, we proceed to do so.

11. We may briefly examine the evidence on record. A Panchnama of the place of incident was drawn up at Exhibit12 signed by two Panch witnesses, PW1 Vijaykumar Chhatrasinh Zala and PW2 Ajitsinh Harmanbhai Zala. In the said Panchnama, the scene of incident has been described and it is stated that a kerosene lamp was found in which a little kerosene was present. A halfburnt log from the stove was also found. On the floor, there were signs of kerosene. A sample of 100 Grams of mudsoaked kerosene was taken in a plastic bag. The wick was found separately. A printed saree red, yellow and green in colour was found, of which the middle part was burnt and corner was burnt. The smell of kerosene was emanating from the saree. This saree was also taken in a plastic bag. The tinsheets of the roof were blackened and household articles were lying in a disorderly condition.

12. This Panchnama, however, has not been supported by either of the Panch witnesses in their depositions at Exhibits11 and 13, respectively. Both the Panch witnesses of this Panchnama have been declared hostile.

13. PW3 is Shanabhai Dahyabhai Talpada whose deposition is available at Exhibit14. He is one of the Pancha witnesses of the physical verification of the accused.

14. PW4, who has deposed at Exhibit16 is Punambhai Punjabhai Vaghela, who is the second panch of the Panchnama of the physical verification of the accused at Exhibit15. This Panchnama indicates that there were small burn marks on both the hands of the accused and stains as though of burns, were also present.

15. This Panchnama has also not been supported by PW3 and 4, its Panch witnesses, who have also been declared hostile.

16. The Inquest Panchnama is at Exhibit18. In Column12 of the said Panchnama, it is stated that as per the opinion of the Panchas and the Police, the deceased died due to kerosene being poured upon her by the accused who set her ablaze. The single panch of this Panchnama, PW5 Ramanbhai Chimanbhai Zala, has failed to support the version of the prosecution and has been declared hostile.

17. We now come to the deposition of Kashiben, the motherinlaw of the deceased, who has been examined as PW6 at Exhibit24. This witness has stated that she lives with the deceased and the accused. She has, however, maintained that the accused used to treat the deceased well and never scolded her or gave her any trouble. As per her version, when the deceased was cooking on the day of the incident, the kerosene lamp fell down which resulted in the deceased being burnt. Kashiben has stated that she extinguished the blaze with the help of a quilt and called the 108 Ambulance. That the deceased did not say anything and there was no quarrel between the deceased and the accused. This witness has been declared hostile. In her crossexamination on behalf of the prosecution, she

has denied the version given by her in her Police statement before the Police. In the crossexamination on behalf of the defence counsel, this witness has stated that the deceased did not state anything before the Executive Magistrate and, in fact, it was she who had given all the answers to his questions.

18. PW7, Shakuben Narendrabhai Rajparmar, sisterinlaw (Jethani) of the deceased has been examined at Exhibit25. She has supported the version of PW6 Kashiben. This witness, as well, has not supported the version of the prosecution and has been declared hostile. In her crossexamination by the defence counsel, she has stated that the deceased has not stated anything before the Executive Magistrate and all the answers were given by PW6 and herself.

19. PW8, Bhikhabhai Mohanbhai Sodha Parmar is the real brother of the deceased, who has been examined at Exhibit27. According to his version, in the fifteen years of marriage of his sister with the accused, there was no complaint regarding any quarrel between them. On the contrary, he states that the accused used to treat the deceased well. He states that on the day of the incident he received a telephone call from the brotherinlaw (Jeth) of the deceased regarding the incident. He came to the Civil Hospital at Ahmedabad and saw that the deceased was not in a condition to talk. On inquiry, he was informed that the deceased got burnt while cooking. This witness has also been declared hostile. He has denied the suggestion on the part of the counsel for the prosecution that he has entered into a compromise with the accused and is deposing falsely.

20. PW9, Gordhanbhai Mohanbhai Sodha Parmar is another brother of the deceased, who has been examined at Exhibit28. He has also maintained that there was no quarrel between the deceased and the accused and the latter used to treat the deceased well. This witness has also been declared hostile. He has denied the suggestion that he is deposing falsely on account of a compromise with the accused.

21. PW10, Arjunbhai Gandabhai Talpada, Head Constable, was on duty on 05.03.2010 at Civil Police Chawki, Nadiad, when he received an intimation that a patient by the name of Lalitaben Kiritsinh Rajparmar had been burnt by her husband after pouring kerosene and setting her ablaze. She was brought for treatment to the Civil Hospital at Nadiad from where she was transferred to the Civil Hospital, Ahmedabad, for further treatment. He forwarded this information to the Chaklasi Police Station, telephonically. This intimation has been recorded at Exhibit30 by Police Station Officer, Chaklasi Police Station.

22. PW11, Muljibhai Somabhai Zala, has been examined at Exhibit31. He is a neighbour of the deceased. He has stated that when he was taking his meals he heard loud shouts from the house of the deceased. Upon going there, he saw that PW6 was extinguishing the flames on the body of the deceased, with a quilt. He was informed that the deceased had sustained burn injuries while cooking. This witness has been declared hostile and has retracted from the earlier version given in the Police statement. In his crossexamination on behalf of the defence

counsel he has stated that the accused and the deceased used to live peacefully together and there was no incident of any quarrel between them.

23. Similar is the version of PW12, Madhuben Raghuvirsinh Zala, another neighbour of the deceased, who has not supported the version of the prosecution and has been declared hostile. In the crossPage examination of this witness, she has stated that the accused did not have the vice of liquor consumption and he used to live peacefully with the deceased.

24. The most important prosecution witness is Indravirsinh Vajubha Zala, Executive Magistrate, who has recorded the dying declaration of the deceased. He has been examined as PW13 at Exhibit33. He has stated in his deposition that on 06.03.2010, he received an intimation from Mr.D.R.Patel, Police SubInspector, Chaklasi Police Station, when he was at his residence at about 01.45 hours, asking him to record a dying declaration at Ahmedabad Civil Hospital. He went to the Burns Department of the Civil Hospital where the deceased was admitted. After asking all the relatives of the deceased to leave the room, he started recording the dying declaration at 02.00 hours. The Executive Magistrate further states that he asked the deceased twenty questions, including her name, address, age, educational qualifications, where she lives etc. In reply to question No.7 regarding when and how the incident took place, the deceased answered that the incident took place on 05.03.2010 at 9.00 p.m. in the house of the accused. On inquiring about the incident, she stated that she was cooking on the stove at 9.00 p.m. when her husband, the accused, who had consumed liquor came there and started quarrelling with her regarding the meal. He poured kerosene from a lighted kerosene lamp on her body and set her ablaze, as a result of which she sustained burn injuries. The Executive Magistrate further states that on his asking the deceased who was with her at that time, she stated that her brotherinlaw (Jeth) and motherinlaw were present. When he asked her whether anyone had burnt her, the deceased answered that her husband, Kiritsinh, had burnt her. On inquiring whether she had a quarrel with anyone, she stated that she had a quarrel with her husband. Thereafter, this witness asked the deceased whether she was tortured by anybody and she answered that her husband, Kiritsinh, used to torture her. On asking where she had taken primary treatment, the deceased answered that she had taken primary treatment at Nadiad Hospital. After recording the answers to his questions, the Executive Magistrate took the right thumb impression of the deceased on the dying declaration and himself signed on it in his capacity as an Executive Magistrate. A copy of the dying declaration was given to the Police SubInspector, Chaklasi Police Station and the signature of the said Police SubInspector was also appended on the dying declaration.

25. This witness further goes on to state that when he went to record the dying declaration, the deceased was conscious, which aspect was certified by the Doctor at Exhibit34. In the intimation received by him from the Chaklasi Police Station for recording the dying declaration, it was stated that the deceased is

conscious. He started to record the dying declaration at 02.00 hours and completed it at 02.20 hours. This witness further states that the dying declaration has been recorded in the words used by the deceased. During the entire period when the dying declaration was being recorded, the deceased was conscious and this aspect has been recorded in the dying declaration itself.

26. In the crossexamination by the defence counsel, the Executive Magistrate has stated that it is not true that just because the deceased had bandages on her chest and neck, she was not in a position to speak. In the crossexamination, this witness has clearly maintained that it is not true that the dying declaration at Exhibit35 has been recorded at the behest of the relatives of the deceased.

27. The intimation at Exhibit34 issued by the Chaklasi Police Station, calling the Executive Magistrate to record the dying declaration, has an endorsement that "the patient is conscious and hemodynamically stable".

28. The most important piece of evidence that has come on record is the dying declaration given by the deceased, at Exhibit35. Twenty questions were asked to her by the Executive Magistrate, to which she has replied. The deceased has stated that her span of marriage with the accused is twelve years. In reply to question No.9 regarding when, where and at what time, the incident took place, she has replied that the incident took place on 05.03.2010 at 9.00 p.m. at her husband's house. On being asked vide question No.10 what was the reason for the incident taking place, the deceased has stated that she was cooking the evening meal at 9.00 p.m. when her husband, the accused, came there after consuming liquor and started quarrelling with her regarding the meal. He poured kerosene on her from a lighted kerosene lamp and set her ablaze. On being asked who has burnt her, she replied that her husband Kiritsinh has burnt her. She has further stated that she had a quarrel with her husband who used to torture her. In reply to question No.20 whether she would like to state anything else, the deceased has stated that her husband used to frequently quarrel with her and torture her. She has also stated in reply to question No.16 that she did not attempt to commit suicide.

29. There is an endorsement by the deceased on the dying declaration to the effect that the contents of the said dying declaration are as per the version stated by her. It is endorsed that the dying declaration has been read over to her. She is not literate, therefore, she has appended her thumb impression on the dying declaration. The Executive Magistrate has made an endorsement on the dying declaration that when the said declaration was being recorded, the deceased was fully conscious, which Page 22 of 42 HC-NIC Page 22 of 42 Created On Sat Jul 29 12:52:25 IST 2017 R/CR.A/544/2012 JUDGMENT aspect was ascertained by him. Further, it is stated that no relatives of the deceased were present when the dying declaration was recorded.

30. The next prosecution witness is PW14, Dr.Manish Jentilal Gandhi, who has deposed at Exhibit36. He has performed the postmortem on the body of the

deceased. In his version, he describes the burns received by the deceased and the condition of the body. He has stated that the deceased had 50% burns. Her whole chest, eyes, neck, face and half of her back were burnt. The injuries found on her body were prior to her death. This witness has stated that the nature of injuries sustained by the deceased were sufficient in the natural course to cause death. The Postmortem Report is at Exhibit37, wherein the cause of death has been stated to be "cardiorespiratory failure due to septicemia due to burns over body".

31. Dr.Dineshkumar Laljibhai Madhukar, who administered primary treatment to the deceased at the Civil Hospital, Nadiad, has been examined as PW15 at Exhibit39. Being the Medical Officer Incharge of the said Hospital where the deceased was first taken, he has recorded the medical history of the deceased. He has stated that the deceased gave him the medical history herself and stated that her husband has poured kerosene upon her and burnt her. This witness has categorically stated in his deposition that the deceased was conscious. He has noted the injuries received by the deceased, which were serious in nature. In crossexamination by the defence counsel, this witness has denied the suggestion that due to the serious nature of the injuries sustained by the deceased, she could not speak and that she was not in a fit mental state. He has further stated that it is not necessary that in every case tranquilizers are required to be administered. He has repelled the suggestion that the deceased was unable to speak as she had 51% burns. He has further repelled the suggestion that the medical history was not given by the deceased, but by her relatives. This witness has categorically stated that the medical history was given by the deceased herself.

32. The case papers of the medical history given by the deceased at Nadiad Civil Hospital are at Exhibit41. It is stated in the said case history that the patient was brought in the 108 Ambulance and has sustained burns due to kerosene being thrown by the husband and fire being set to her. It is clearly stated in the medical history by the doctor, PW15, that the patient is conscious and she has given the case history herself. The case papers have been signed by PW15.

33. Exhibit43 is the Certificate of the Medical Officer, Civil Hospital, Nadiad, dated 05.03.2010, wherein it is stated that the deceased was burnt by her husband. She is fully conscious and has given the case history herself.

34. PW16, Narendrasinh Udesinh Rajparmar, is the brother of the accused, who has deposed at Exhibit44. He has not supported the version of the prosecution and has been declared hostile.

35. PW17, Dhiraj Rameshchandra Patel is the Investigating Officer, who has deposed at Exhibit45. He has stated that on 06.03.2010, he was on duty at Chaklasi Police Station. Pursuant to an intimation being received from the Nadiad Police Station, he went to the Civil Hospital, Nadiad. The deceased herself narrated the details regarding her burn injuries, which he noted down. He took

the thumb impression of the deceased on the statement and appended his signature. He describes the statements of Kashiben, Shakuben, Bhikhabhai, Gordhanbhai, Muljibhai, Madhuben and Narendrasinh as having been recorded by him, from which they have resiled. He has repeated what the said witnesses have stated before him.

36. In his crossexamination at the behest of the defence counsel, this witness has denied the suggestion that, looking to the injuries sustained by the deceased, she was not in a condition to speak. He has further denied the suggestion that the complaint given by the deceased was not recorded as per her say and it was written by him and her thumb impression was appended to his version. He has also denied that the Panchnama was not as recorded by the Panchas or that the chargesheet against the accused is not correct.

37. We now come to another important piece of documentary evidence which is the complaint dated 06.03.2010, given by the deceased herself. In the said complaint the deceased has categorically stated that when she was cooking at 9.00 p.m. on 05.03.2010, the accused came there and started quarrelling with her as to why dinner was not ready. The accused was accustomed to consuming liquor. The deceased did not say anything, but the accused, in a fit of anger, stated that he would burn her alive. The accused poured kerosene from a lighted lamp on her body and set her ablaze by taking a burning log from the stove. Her clothes caught fire and her entire body, including her face, chest, back and hands got burnt. She has stated that her motherinlaw, Kashiben, extinguished the flames with a quilt and took her to Nadiad Civil Hospital for treatment.

38. The complainant has clearly stated in the complaint that she is fully conscious.

39. The report of the Forensic Science Laboratory is at Exhibit53. It indicates that the clothes and mud collected from the scene of the occurrence contain traces of kerosene.

40. The above, in a nutshell, is the evidence on record.

41. The Sessions Court has evaluated the entire evidence and arrived at the conclusion that the charge against the accused has been proved beyond reasonable doubt, mainly by relying upon the dying declaration.

42. It has been submitted on behalf of the appellant that there are no eyewitnesses to the incident, though all members of the family were staying together in a joint family. Further, there is no independent witness to prove that the accused poured kerosene and set the deceased on fire.

43. The motherinlaw of the deceased, Kashiben, appears to have been present at the scene of incident, as it was she who has extinguished the flames on the body of the deceased with a quilt. However, as has been already recorded hereinabove, all the family members of the deceased and accused have turned hostile.

44. The question for determination before us are, therefore, is whether the dying declaration of the deceased is trustworthy and genuine and can form the sole basis of conviction and whether the said dying declaration requires independent corroboration from other sources.

45. If we examine the version of the deceased, whether in the dying declaration, complaint or medical history given by her, we find that it has remained consistent throughout. On 05.03.2010, the day of the incident, the deceased was taken to Nadiad Civil Hospital where she gave her case history on her own, stating that she was burnt by her husband by pouring kerosene on her body and setting her ablaze. This medical history has been recorded on 05.03.2010, at 10.20 p.m. when she was brought in the 108 Ambulance. It is clearly endorsed by the doctor on the case history that the patient is conscious and has given the medical history herself.

46. Further, in the Certificate issued by the Medical Officer, Civil Hospital, Nadiad, it is also recorded that the medical history has been given by the patient herself, who is fully conscious.

47. The next document is the complaint at Exhibit46, given by the deceased, herself, on 06.03.2010. In the Page 29 of 42 HC-NIC Page 29 of 42 Created On Sat Jul 29 12:52:25 IST 2017 R/CR.A/544/2012 JUDGMENT complaint, the deceased has given the entire narration of the incident as it took place, to the Investigating Officer. She has also stated that she is fully conscious.

48. In the intimation at Exhibit34 dated 06.03.2010, given by the Chaklasi Police Station to the Executive Magistrate to come for the record of the dying declaration of the deceased, it is stated that "the patient is conscious and hemodynamically stable". It is thereafter that the dying declaration has been recorded.

49. From the dying declaration at Exhibit35, it is clear that the deceased has answered each and every one of the twenty questions put to her by the Executive Magistrate. She has maintained the version given by her earlier, that when she was cooking at 9.00 p.m. at her husband's house, the accused came there after consuming liquor, poured kerosene on her from a lamp and set her ablaze. She has clearly stated that her husband used to quarrel with her and torture her and that she has not committed suicide. There is an endorsement of the Executive Magistrate on the dying declaration that when the dying declaration was being recorded, the deceased was conscious. This aspect has been verified by him and the dying declaration was recorded after evicting all relatives of the deceased from the room.

50. Thus, we clearly see a strong thread of clarity, consistency and veracity running through the version of the deceased, right from the time of her being admitted to the Nadiad Civil Hospital upto the recording of the dying declaration. The deceased has neither faltered or altered her version, at any stage. The deceased was admitted to the Nadiad Civil Hospital on 05.03.2010 and later

taken to the Civil Hospital, Ahmedabad, where she died on 12.03.2010.

51. It has been submitted on behalf of the accused that the Police witnesses, doctors and the Executive Magistrate have deposed only as per their duty, therefore, their versions cannot be believed in the absence of corroboration from other sources. We cannot consider this to be a valid argument, as there is no reason to disbelieve the versions of the Executive Magistrate, the doctors and the medical history recorded by the doctor, which versions are fully consistent with that of the deceased at every stage. There is no reason to believe that the Executive Magistrate would have given a wrong version of the events that took place. On the contrary, we find that the Executive Magistrate, while recording the dying declaration, has taken care to ensure that the deceased was fully conscious and none of her relatives were present in the room when the dying declaration was being recorded. The version of PW6, the motherinlaw of the deceased and PW7, the "Jethani" of the deceased that the answers to the questions put by the Executive Magistrate were given by them is, therefore, not believable. In any case, there is an interse contradiction in the versions of PW6 and 7 in this regard, as PW6 has maintained that she gave all the answers and PW7 says that both she and PW6 gave the answers to the Executive Magistrate.

52. It is now a wellsettled position of law, reiterated by the Supreme Court and this Court in a catena of judgments, that if the dying declaration is consistent, trustworthy and untutored, conviction can be maintained solely on its basis, without any further corroboration. The legal principles in this regard have been reiterated by the Supreme Court in the case of Lakhan Vs. State of M.P. (supra), in the following terms : "8. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be crossexamined. Such statements themselves are relevant facts in certain cases. 9. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not

contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution's version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide *Kushal Rao v. State of Bombay*, *Rasheed Beg v. State of M.P.*, *K. Ramachandra Reddy v. Public Prosecutor, State of Maharashtra v. Krishnamurti Laxmipati Naidu*, *Uka Ram v. State of Rajasthan*, *Babulal v. State of M.P.*, *Muthu Kutty v. State, State of Rajasthan v. Wakteng and Sharda v. State of Rajasthan.*)" (emphasis supplied)

53. In the present case, the dying declaration has been given by the deceased in a fully conscious state of mind. There is no evidence to the contrary. The version of PW6, PW7 and PW8 in this regard is belied by the medical evidence and testimony of the Executive Magistrate. The dying declaration is voluntary, trustworthy, consistent and untutored. It clearly names the accused as being the perpetrator of the incident of her being burnt by his pouring kerosene from a lighted lamp on her and setting her ablaze with a burning log. There has been no infirmity in recording the dying declaration by the Executive Magistrate who has ensured that the deceased was conscious throughout. It has been further stated by the Supreme Court in *Lakhan Vs. State of M.P.* (supra) that the dying declaration recorded by a competent Magistrate would stand on a much better footing than the declaration recorded by an Officer of a lower rank. The relevant extract is reproduced hereinbelow : "12. A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim, however, circumstances showing anything to the contrary should not be there in the facts of the case. (Vide *Ravi Chander v. State of Punjab*, *Harjit Kaur v. State of Punjab*, *Koli Chunilal Savji v. State of Gujarat* and *Vikas v. State of Maharashtra.*)"

54. In the case of *Panneerselvam Vs. State of T.N.*, reported in (2008) 17 SCC 190, the Supreme Court has held that conviction can be based solely on the basis of the dying declaration and there is no absolute rule that unless it is corroborated conviction cannot be based on it. The relevant extract of the said judgment is as under : "8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any

further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

55. It is not the case of the defence that the Executive Magistrate has recorded a wrong version. He had no axe to grind and no motive to do so. The very submission on behalf of the appellant that the Executive Magistrate has deposed in the course of his duty shows that there is no reason for the Executive Magistrate to depose anything but the truth regarding the recording of the dying declaration. Further, the entire sequence of events narrated by the deceased lends sufficient credence to the dying declaration. The deceased has maintained her version throughout, ever since the time of the incident till the recording of the dying declaration, without faltering or changing her version at any stage. There are no inconsistencies in the dying declaration. The deceased has not named any other person but the accused as being the perpetrator of her burn injuries. The aspect that there was no previous complaint by her against the torture or the vice of liquor consumption by the accused, as suggested by learned counsel for the appellant does not, in any manner, detract from the veracity of the dying declaration. The Sessions Court has considered the evidence on record, especially the dying declaration, in a meticulous and detailed manner and has, in our view, arrived at an appropriate conclusion on the basis of the evidence on record.

56. The fact that the relatives of the accused and deceased have turned hostile and that even the Panch witnesses have not supported the respective Panchnamas or the case of the prosecution cannot diminish the weight of the documentary evidence on record which clearly proves the case of the prosecution. The Panch witnesses turning hostile cannot detract from the veracity of the evidence, as held by the Supreme Court in the case of Vahaji Ravaji Thakore and another Vs. State of Gujarat, reported in 2004 (1) GLR 777. The relevant extract of the said judgment is reproduced hereinbelow : "(C) Evidence Act, 1872 (I of 1872)Sec. 27Panchas not supporting recovery - Prosecution case cannot be discarded on this count when evidence of Investigating Officer is found reliable."

57. Learned Additional Public Prosecutor has relied upon the judgment of Janakbhai Ramjibhai Parmar and others Vs. State of Gujarat (supra), wherein this Court, after considering the judgments of the Supreme Court has arrived at the following conclusion : "14. We have no reason to discard such dying declarations. It is true that being an exception to the normal rule of hearsay evidence not being admissible in evidence, dying declaration is subjected to minute scrutiny before it can form the sole basis for conviction. Nevertheless, no rule of law or one propounded by the Court, provides that the dying declaration cannot form the sole basis for conviction. If on minute scrutiny, it is found that the declaration was made out of free volition, declarant was free from any tutoring and that statement was truthful and reliable, the conviction can surely

be based on such dying declaration. Reference in this regard can be made to the decision of Supreme Court in case of *Atbir v. Government of NCT of Delhi*, (2010) 9 SCC 1, it was held and observed as under:

"22 The analysis of the above decisions clearly shows that,

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

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

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

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

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration."

58. Examining the present case on the touchstone of the above principles of law, we do not have any hesitation in arriving at the conclusion that the dying declaration, being clear, trustworthy, credible and untutored, the conviction of the accused can be maintained solely on its basis.

59. In this view of the matter, we find that the dying declaration, being credible and trustworthy, there is no requirement of the independent corroboration of its contents.

60. Taking into consideration the totality of the facts and circumstances of the case as discussed above and weight of the evidence on record which has been

minutely considered by us, we do not find any flaw in the judgment of the Sessions Court under challenge.

61. The appeal is dismissed. The R&P be transmitted back to the concerned Trial Court.