

(2008) 07 GUJ CK 0032

In the Gujarat High Court

Case No : Criminal Appeal No's. 624 and 784 of 2000

Natvarsinh Jhalasinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 100, 101, 102, 103, 104

Citation : (2008) CriLJ 4074

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; Mukesh Patel, APP for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The Appellant-State of Gujarat has filed Criminal Appeal No. 784 of 2000 and the appellant-original accused has filed Criminal Appeal No. 624 of 2000. Both the appellants (the State of Gujarat as well as original accused) in above Criminal Appeals have challenged the Judgment and Order dated 2.6.2000 rendered in Sessions Case No. 200 of 1999 by the learned Additional Sessions Judge, Panch Mahals at Godhra. In Criminal Appeal No. 624 of 2000 the State has challenged the Judgment and Order dated 2.6.2000 rendered in Sessions Case No. 200 of 1999. In Criminal Appeal the appellant-accused has challenged the conviction and sentence awarded by the learned Additional Sessions Judge, Panch Mahals at Godhra in Sessions Case No. 200 of 1999 vide Judgment and order dated 2.6.2000. Since both the appeals arise out of same judgment and order as well as documentary evidence being same, both these appeals are heard and disposed of by this common Judgment.

2. The facts of the prosecution case is that the complainant Parshottam Chhaganbhai is residing in Divda Colony, at Kathana. The accused are also residing in Divda Colony. The complainant is serving as Dresser in the dispensary

of P.W.D. It is the case of the prosecution that at about 4.00 pm on 26.4.1999 his grand daughter Radhika climbed on the terrace of his house for taking "Goras Ambli". Thereupon Kalubhai Bhabhor told the grand daughter of complainant as to why has climbed on the terrace and thereby he has given a threat and on saying so the girl all of a sudden jumped from the terrace and fell down on the earth. Thereupon some hot discussion took place between the complainant and Kalubhai. Kalubhai got excited and climbed on the terrace and from there he threw piece of wooden log at the complainant. Thereafter he stepped down and gave push to the complainant. Thereafter, at about 7.00 p.m. Ashwin, son of the complainant, came and asked Kalubhai as to why he threw wooden piece at his father and some hot discussion took place between them. On 27.4.1999 at about 10.00 a.m. when his son Ashwin was going towards Bazar, Natvarbhai, Kalubhai and Rajesh were quarreling with Ashwin. The complainant thereupon went to his son, but, before he reached to his son, Natvarbhai inflicted the blows of knife on right side of stomach, on the neck and on the back side of the body of Ashwin. Both Kalubhai and Rajesh caught hold of his son. When the complainant tried to intervene and save his son Natubhai inflicted the blow of knife on the chest of the complainant. Thereupon the complainant shouted and on hearing his shouts Prabhatsinh Nathubhai, Taraben wife of complainant and son Yogesh came there. Thereafter, the accused ran away. Thereafter, they had gone to the Police Station, but as the complainant and deceased were seriously injured, P.S.I. asked them to go to the Hospital and so complainant and Ashwin were shifted to the hospital and there they have lodged the complaint. P.S.I. also went to the hospital and registered the complaint being Santrampur Police Station CR No. I-54 of 1999. The investigation was carried out by P.S.I., Santrampur Police Station. P.S.I. also sent the Yadi to the Executive Magistrate requesting him to record the Dying Declaration of Ashwinbhai. Thereafter, the Executive Magistrate came and recorded the dying declaration of Ashwinbhai. The Police has registered the offence punishable under Sections 307, 323, 504, 506(2), 114 I.P. Code. Thereafter, injured Ashwin, son of the complainant was shifted to Lunavada Hospital where on the way, he expired and therefore offence punishable u/s 302 of I.P. Code was added by the Police. The Investigating Officer prepared the Inquest Panchnama i.e. panchnama of dead body of deceased and the panchnama of scene of offence. The accused were arrested and the Muddamal was seized. Post Mortem Note was prepared by the Medical Officer. The Medical Certificate and the Post Mortem Note, showing the cause of death, were obtained from the Medical Officer. During the investigation, the Investigating Officer had recorded the statement of witnesses and map of scene of offence was also prepared. On completion of investigation, incriminating evidence was found against the accused and, therefore, the Police filed charge-sheet against the accused in the Court of learned Magistrate.

3. After filing the charge-sheet, in the present case, as the offence was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, committed the said case to the Court of Sessions at Surat.

4. The charge (Ex.3) was framed against the accused persons. The accused pleaded not guilty to the said charge and claimed to be tried.

5. In order to bring home the charge levelled against the accused and to prove the culpability of the accused, the prosecution has examined in all 7 witnesses and relied upon their oral testimonies. They are as under:

P.W. 1 - Girvatsinh Prabhatsinh, Executive Magistrate, Ex.9

P.W. 2 - Dr. Lalsinh Gulabsinh Ravat, Ex. 10;

P.W. 3 - Parshottambhai Chhaganlal Raval, Exh.22

P.W. 4 - Pankajkumar Madanlal Yadav, Ex.24

P.W. 5 - Yogesh Parshottambhai Raval, Ex.34;

P.W. 6 - Prabhatsinh Nathusinh Puvar, Ex.35;

P.W. 7 - Raghunathsinh Motisinh Rathod, P.S.I., Santrampur Police Station, Investigating Officer, Ex.36

6. To Prove the culpability of the accused, the prosecution has also produced and relied upon the following documentary evidence. They are as under:

1. Yadi from PSI, Santrampur, for treatment, Ex.11;

2. Post Mortem Report of deceased Ashwin at Exh.12

3. Injury Certificate of deceased Ashwin Ex.13;

4. Injury Certificate of injured Purshottambhai, Ex.14;

5. Injury Certificate of injured Yogesh, Ex.15

6. Yadi to Executive Magistrate for DD, Ex.18;

7. Dying Declaration of deceased at Exh.19;

8. Complaint Ex.23;

9. Panchnama of muddamal knife, Exh.25;

10. Yadi to Executive Magistrate, Exh.26;

11. Panchnama of scene of offence, Exh.27;

12. Yadi to P.S.I. from P.S.O., Exh.28;

13. Yadi to Executive Magistrate, x.29;

14. Inquest Panchnama, Ex.30;

15. Receipt for delivering the dead body,Ex.31;

16. Panchnama of clothes from the dead body,Ex.33;

17. N.C. Complaint filed by Kalubhai, Exh.40;

18. Panchnama of physical condition of accused, Ex.41

7. After examining the witnesses further statement of accused u/s 313 Cr.P.C. was recorded in which the accused have denied the case of prosecution in toto. They have also stated that false case has been lodged against them. However, they have neither led any evidence nor examined any witness in support of their defence.

8. After considering the oral as well as documentary evidence and after hearing the parties, the learned Additional Sessions Judge vide impugned Judgment and Order dated 2.6.2000, held the accused No. 1 guilty to the offence punishable u/s 302 I.P. Code and convicted and sentenced the accused to suffer rigorous imprisonment for life and to pay fine of Rs. 500/- and i/d to undergo R.I. for three months; the accused Nos. 2 & 3 were held guilty for the offence punishable u/s 324 I.P. Code and came to be convicted and sentenced to suffer 18 months rigorous imprisonment with fine of Rs. 300/- each and i/d to undergo rigorous imprisonment for 15 days. Both the accused Nos. 2 & 3 were also held guilty for the offence punishable u/s 323 I.P. Code and they were convicted and sentence to suffer Rigorous imprisonment for three months.

9. Being aggrieved by and dissatisfied with the impugned Judgment and Order passed by the learned Trial Judge imposing lesser punishment to the co-accused Kalubhai Jalsingbhai and Raju @ Rajeshbhai Jalsinh, the present appellant-State Government has filed this Appeal being Criminal Appeal No. 624 of 2000 and being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence rendered by the learned Additional Sessions Judge in Sessions Case No. 200 of 1999, the appellant-convict prisoner Natvarbhai Malsinhbhai Bhabhor, has filed Criminal Appeal No. 784 of 2000, through Jail, and Learned Advocate Ms. Sadhna Sagar is appointed through Legal Aid to defend the case of the present Appellant-accused as also the respondents-accused of Criminal Appeal No. 624 of 2000.

10. Heard Ms. Sadhna Sagar, learned Advocate, appointed through Legal Aid, for the accused persons and Mr. Mukesh Patel, learned A.P.P., for the respondent-State.

11. Learned Advocate Ms. Sadhna Sagar has contended that the trial Court has not considered the evidence of the witnesses properly and committed a grave error in convicting and sentencing the original accused No. 1 in an offence of murder. Looking to the evidence this is a clear case of self defence. She contended that at the time of incident as also prior to the date of incident quarrel took place between the parties and both the parties were aggressive. Therefore, the learned trial Judge has not applied his mind properly and held the appellant-accused No. 1 guilty for the offence of murder. She has also contended that plea of defence is required to be granted at this stage and the accused No. 1-appellant who is in jail since long, may be acquitted. She contended that the

Dying Declaration was recorded under the influence of relatives and, therefore, the same cannot be considered in eye of law. She also contended that from the above evidence it is clearly established that this is a clear case of self defence and the prosecution has wrongly booked the appellant-accused No. 1 as accused for committing the murder of deceased. She further contended that the prosecution has not examined material independent eye witnesses who were present at the time of incident. She also contended that the Investigating Officer has not carried out the investigation properly. She has also contended that the Dying Declaration which was recorded by the Executive Magistrate is against the provision of law. She, therefore, prayed that in such circumstances, benefit of doubt is required to be given to the appellant-accused and the accused may be acquitted from the charges levelled against him.

12. Learned APP Mr. Mukesh Patel, for the respondent, has contended that there is voluminous reliable, trustworthy and clinching evidence on record which unequivocally and unerringly proves that the accused had inflicted the injuries on the deceased as well as on the body of his father and brother. He further contended that from the evidence of the complainant and other witnesses as well as from the documentary evidence, the prosecution has proved the guilt of the accused. He also contended that the dying declaration is a corroborative piece of evidence and, therefore, no other evidence is necessary. He further contended that the prosecution has established its case beyond reasonable doubt and prayed that the Judgment and Order passed by the trial Court is required to be confirmed, in so far as appellant-accused of Criminal Appeal No. 784 of 2000. He also contended that the trial Court, after fully appreciating the evidence, has rightly convicted and sentenced the appellant-accused of Criminal Appeal No. 784 of 2000. Mr. Patel has also contended that the trial Court has not considered the case of prosecution so far as question relates to the sentence imposed on the co-accused. He also contended that the co-accused are equally liable for the commission of offence of murder and the trial Court should have imposed the punishment of life imprisonment on the co-accused for the offence punishable u/s 302 I.P.C. He, therefore, prayed to confirm the Judgment and order of conviction and sentence passed by the trial Court in so far as appellant of Criminal Appeal No. 784 of 2000 and reverse the Judgment and order of conviction and sentence so far as respondents-accused of Criminal Appeal No. 784 of 2000 are concerned by imposing the punishment of life imprisonment to the co-accused, viz. accused No. 2 & 3 for the offence punishable u/s 320, 114 I.P. Code as they are the abettors. He also contended that the discovery panchnama and evidence of panch witnesses have proved the guilt of the present appellant. Mr. Patel has gone through the provision of Sections 107 & 108 of I.P. Code and contended that before the trial Court the prosecution has established its case beyond reasonable doubt that both the respondents are the co-accused.

13. We have gone through the oral as well as documentary evidence led by the prosecution before the trial Court.

14. The Hon"ble Apex Court in a number of decisions held that "it is not the duty of the appellate Court when it agrees with the view of trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court". The said law is laid down by the Hon"ble Court in the case of (1) Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, and (2) in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, . Yet, in the interest of justice and to observe said cause of Appeal in a legal way, we have discussed the evidence as well as the reasons assigned by the trial Court.

15. We have gone through the Judgment and also the arguments advanced by both the sides. We have also perused the evidence on behalf of the prosecution as well as on behalf of the defence. We have also gone through the evidence of Prosecution witness No. 2 Dr. Lalsing Gulabsing Ravat, Medical Officer, evidence of complainant Purshottambhai, who was also injured during the incident, Ex.23 and the evidence of P.W. 5 Yogesh Parsottambhai Raval, Ex.34 (brother of deceased) who was also injured during the incident. We have compared the oral evidence of these witnesses with the oral evidence of Medical Officer and the Dying Declaration. Medical officer has fairly admitted in his deposition that the injuries which were found on the body of deceased was sufficient to cause death of deceased. The injuries inflicted upon the witnesses P.W.3 and P.W.5 are also proved by Medical officer. The Executive Magistrate, who has recorded the Dying Declaration of the deceased is an independent witness. He has no interest in the result of the case. He has also no personal enmity with the accused. After testifying the consciousness of the deceased, he recorded the Dying Declaration. Endorsement of the Doctor on the dying declaration even if not obtained, yet, the same cannot be said to be fatal to the prosecution case. We have also gone through the evidence of P.W. 6 Prabhatsinh Nathusinh, who is residing near the house of the complainant and the accused. This witness has deposed that at the time of incident, he was in the house of complainant. On hearing the shouts he and Parshottambhai (complainant) came out of the house and saw that Kalu and Raju (accused) were beating the deceased and Natubhai (accused) was inflicting the blow of knife on the deceased. When the complainant Parsottam tried to save his son Ashwin, Natvar has inflicted a blow of knife on the chest of Parsottambhai, thereafter injured were shifted to the Santrampur Civil Hospital. Thereafter the deceased was shifted to Lunavada Hospital where on the way he died. This witness is an independent witness who has witnessed the whole incident. This witness is a natural witness and he has no enmity with the accused and, therefore, there is no reason to falsely involved the accused. We have also gone through the evidence of Investigating Officer, Panchas of Inquest Panchnama and the panchnama of scene of offence. We have also gone through the documentary evidence. We are of the opinion that there is no contradictory version made by any of eye witnesses. We have also gone through the Yadi of treatment of accused-respondent Kalubhai Ex.39 and the panchnama of physical condition of the accused Ex.41 and N.C. Complaint filed by Kalubhai Ex.40 and perused the testimony of injured witnesses as well as other witnesses.

16. There is also a sufficient evidence to show the legality and genuineness of dying declaration made by deceased Ashiwinbhai before P.W. 1 Executive Magistrate. It is established that the dying declaration was made by deceased in conscious condition with sound mind. From the injury Certificate it seems that P.W.3-complainant and P.W.5 Yogesh, son of complainant and brother of deceased, have received stabbed injuries which are possible by knife. The same is supported by the evidence of Medical Officer, P.W.2, Ex.10. We have not found any illegality in the investigation also. The investigation has carried out in a proper manner. There was no enmity between the appellant/respondents and the investigating Officer. He has no interest in the result of the case. Therefore, there is no question to disbelieve the say of investigating Officer.

17. During the trial the appellant-accused No. 1 has never produced any iota of evidence regarding the injuries received by the accused. It is contended by Ms. Sadhna Sagar that it is the case of self defence, but, in absence of any injury on the person of accused which itself would be enough to discard the plea of self private defence. The say of Ms. Sadhna Sagar cannot be accepted. This plea was taken by the accused-appellant during the hearing of this Appeal for the first time. In their Further statement u/s 313 Cr.P.C. also, no such plea was taken and even in the cross examination of any witnesses, no such plea of self defence was taken. Therefore, at this stage, the appellant-accused can not take such plea of "self defence" and the same also cannot be permitted in view of settled legal position. It also appears that the accused have never asked any question to any of the witnesses that the deceased and injured persons were also having deadly weapons with them. It is also not proved by defence that the deceased and injured witnesses were armed with deadly weapons and the accused have never inflicted any injuries on the deceased or on the person of complainant and his son nor they inflicted any blows on the accused persons. Therefore, the plea of self defence is required to be rejected.

18. Ms. Sadhna Sagar, learned Advocate contended that quarrel took place probably in a heat of patience. There was no previous enmity between the accused and the complainant. They are the neighbours. It is true that the quarrel took place prior to the day of incident, but, in our view, looking to the fact that at the time of incident the appellant - accused No. 1 was having deadly weapon with him and with an intention to kill the deceased he inflicted the blows on the vital part of the body, the accused acted cruelly with no justification and by his conduct the appellant denied himself of the benefit of Exception - IV of Section 300 I.P. Code. The ingredients of Exception - IV to Section 300 I.P. Code are (i) sudden fight; (ii) absence of meditation; and (iii) no undue advantage of cruelty. These three ingredients must be satisfied, but, in the present case the injured witnesses were found unarmed. So, in this case Exception-IV of Section 300 I.P. Code is not applicable.

19. Oral evidence of P.W.3-complainant and P.W.5 injured witness are related to the deceased. We have scrutinized the evidence of both the witnesses with the

corroboration of medical evidence as well as the evidence of Executive Magistrate and circumstantial evidence like Panchnama, etc. It is settled legal position that if such witnesses are wholly reliable, then the conviction can be based on their solitary evidence. Injured witness complainant and injured witness Yogesh both are father and brother of deceased. This relation need not be corroborated. The complainant - father of the deceased has also received injuries in the said incident and, therefore, he cannot be related witness as well as the interested witness. We find that evidence of these two witnesses is reliable and trustworthy.

20. In the case of *Jesu Asir Singh and Ors. v. The State*, through Inspector General of Police reported in (2007) 12 SCC 19, the Hon"ble Supreme Court has held that in absence of any material brought on record to support the plea of private defence, such plea is unsustainable.

21. The plea of right of private defence cannot be based on surmises and speculation, while considering whether the right of private defence is available to an accused. It is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident may be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right of private defence comprises the body or property - (i) of the person exercising the right, or (ii) of any other person and the right may be exercised in the case of any offence against the body and in case of offences of theft of robbery mischief or criminal trespass and attempt at such offence in relation to property.

22. Section 99 of I.P. Code lays down the limits of the right of private defence. Sections 96 and 98 of I.P. Code give a right of private defence against certain offences and acts. The right given under Sections 96 and 98 and 100 to 106 of I.P. Code is controlled by Section 99 I.P. Code. To claim a right of private defence extending to voluntary causing of death the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Section 100 and 101 I.P. Code define the limit and extent of right of private defence.

23. Section 102 and 105 I.P. Code deal with commencement and continuance of the right of private defence of body and property respectively. The right commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence although the offence may not have been committed but not until there is reasonable apprehension. The right continues so long as the reasonable apprehension of the danger to the body continues.

24. In the case of *Jai Dev Vs. The State of Punjab*, , *Rizan and Another Vs. State of Chhatisgarh*, through The Chief Secretary, Govt. of Chhatisgarh, Raipur,

Chhatisgarh, and Sucha Singh and Another Vs. State of Punjab, , it has been observed by the Hon"ble Supreme Court that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

25. In the case of Raj Pal and Others Vs. The State of Haryana, , it has observed by the Hon"ble Supreme Court, (in Para 13), as under:

Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused persons has been rightly discarded.

26. The Hon"ble Supreme Court in number of decisions has propounded and settled law that (1) there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration; (2) if the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. We have gone through the medical evidence and also the evidence of Executive Magistrate, who recorded dying declaration of the deceased. We are fully satisfied on going through the evidence of Executive Magistrate that the victim was conscious and in a fit mental condition. The dying declaration was recorded immediately after the occurrence of the incident and in the said dying declaration the deceased has clearly mentioned the history of incident as well as who has inflicted the blow on him. Therefore, it cannot be said that the dying declaration is not trustworthy. The dying declaration was recorded in writing by the Executive Magistrate and, therefore, it cannot be said that it is not admissible in eye of law. In the facts and circumstances of the case there is no doubt at all that the dying declaration made by the deceased was a voluntary and in a conscious state of mind. A person on the verge of death is not likely to tell lie or to concoct a false story or falsely involve somebody. It cannot be laid down as a general proposition that a dying declaration is a weaker piece of evidence than other pieces of evidence. The deceased has given a statement before the Investigating Officer and the Executive Magistrate which is a proof of the manner in which deceased was assaulted. Therefore, there is no reason to doubt the correctness and authenticity of dying declaration which is fully supported by the Executive Magistrate and also by P.W. 3 eye witness. There cannot be any hard and fast rule regarding the conduct of a human being during the occurrence of the incident or subsequent thereto. In a given set of circumstances or a situation, a person may not behave in an ideal way or in any set pattern. It varied from man to man. So conduct should be examined in light of the facts situation of the case. Interested evidence is not necessarily

unreliable and even partisanship by itself is not a valid ground for rejecting the entire sworn testimony. Was his/her presence probable? If so, whether the substratum of his/her story is consistent with other evidence, natural course of events, surrounding circumstances, and inherent probabilities of the case, and will it carry conviction with a prudent person? If the answer is yes, and if the evidence appears to be almost flawless and free from suspicion, the Court may accept it, without seeking corroboration from any other source. The Court must consider the substratum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by defence. The Court must bear in mind that witnesses to a crime may not react in a normal manner, nor do they react uniformly. The efforts should be made to find out the truth by separating the chaff from the grain. Sufficient weight must be given to the evidence of doctor who performed autopsy against the statements in Text Books. The Court can also prefer to accept eye witness's testimony in preference to the opinion of medical expert. If Evidence of two doctors is conflicting, it must be scrutinized carefully and the more reliable version can be accepted. The court must carefully examine the discrepancies and if it is reasonably possible to arrive at the substantial and true version, the Court should not throw out the prosecution case on the basis of such discrepancies.

27. From the above facts we found that the deceased was in fully conscious state of mind at the time of recording of dying declaration by the Executive Magistrate. There is no doubt about the correctness and authenticity of dying declaration in question and we are of the view that the dying declaration does not require corroboration. The principle of proof beyond reasonable doubt is applicable in the matter of testing the guilt of the accused. It has no operation in the area of proof of primary facts, particularly in cases where the guilt of the accused is sought to be established by circumstantial evidence. The proof of primary facts is one thing and inference of facts to be drawn from primary facts is another thing. In regard to the proof of basic or primary facts the Court has to judge the evidence in the ordinary way and in the appreciation of evidence in respect of proof of these basic or primary facts. There is no scope for the application of the principle of benefit of doubt. The Court considers evidence and decides whether that evidence proves the particular fact or not. When it is held that certain facts are proved, the question then arise whether these facts lead to an inference of the guilt of the accused or not and in dealing with these aspects, the doctrine of benefit of doubt would apply and inference of guilt of accused can be drawn only if the proved fact is incompatible with his innocence and is compatible with the guilt of accused.

28. We are of the opinion that if the substratum of prosecution case remains unaffected and remaining part of the evidence is trustworthy the prosecution case should be accepted to the extent it is considered safe and trustworthy.

29. From the above it is clearly established that at the time of recording of the Dying Declaration, the deceased was fully conscious. The statement made in the

form of Dying Declaration, in presence of medical expert, is a best proof and there is no reason to disbelieve the same. The Dying Declaration is admissible in evidence on which conviction can be based without any further corroboration if Dying Declaration is found genuine and trustworthy. Looking to the evidence, there is a time gap between the recording of Dying Declaration and occurrence of death. Even if there is time gap, that by itself would not destroy the evidentiary value of the statement. The statement does not lose its credibility if the declarant chances to live longer than anticipated. The Dying Declaration is a best guarantee of the truth if the statement made by dying person who is totally conscious at the time of recording of the Dying Declaration. It is also laid down by the Hon'ble Supreme Court that admissibility of the dying declaration rests upon the principles that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under other circumstances. *nemo moriturus praesumitur mentire* i.e. a man will not meet his maker with a lie on his mouth. Such statements are admitted upon consideration that their declaration are made in extremity when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. In the case of *Najjam Faraghi @ Nijjam Faruqui Vs. State of West Bengal*, the Hon'ble Supreme Court has observed in Head Note (A) as under:

(A) Penal Code (45 of 1860), Section 300 - Murder - Evidence - Death of woman due to burning-Evidence of post-mortem examiner that it was not case of suicide-No attempt by accused-husband who was admittedly present at scene of occurrence to put out fire and save wife-Dying declaration by wife showing that husband killed her by setting her on fire-mental condition of deceased sufficiently good to give statement to Magistrate - Conviction of accused upheld - Mere fact that case was registered initially u/s 306 and later after examination of witnesses alternative charge under same section was framed will not vitiate proceedings.

30. This Court has considered the submissions advanced by the learned Advocates appearing for the parties and perused the impugned Judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with criminal appeals, this Court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

31. As observed and discussed at length, in our opinion, in light of the oral as well as documentary evidence, it is established by the prosecution that accused Natvarbhai had inflicted the blows of knife on the body of deceased and thereby the deceased succumbed to the injury. There is no reason for the deceased to

falsely involve the appellant-accused in the incident. From the oral as well as documentary evidence adduced by the prosecution, in our opinion, the learned trial Judge has rightly convicted and sentenced the appellant-accused. Therefore, the conviction and sentence awarded by the trial Court against the appellants-accused does not call for any interference of this Court in exercise of appellate powers.

32. We find ourselves in complete agreement with the said findings, ultimate conclusion and resultant order of conviction passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned Judgment and order of conviction and sentence.

33. For the forgoing reasons both the Appeal (one filed by appellant-accused Natvarbhai Malsingbhai Bhabhor being Criminal Appeal No. 624 of 2000 and another filed by appellant-State of Gujarat being Criminal Appeal No. 784 of 2000) fail and are hereby dismissed. The Judgment and Order of conviction and sentence dated 2.6.2000 recorded by the trial Court against the appellants-accused in Sessions Case No. 200 of 1999 is hereby confirmed and maintained. Muddamal be disposed of in terms of directions contained in the impugned Judgment and order passed by the trial Court. The Appeal is accordingly dismissed.

34. Both these Appeals are accordingly dismissed.