

(2009) 02 GUJ CK 0020
In the Gujarat High Court
Case No : Criminal Appeal No. 920 of 2001

Nitesh Atmaram Parmar and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 32, 60
Penal Code, 1860 (IPC) — Section 114, 302, 498A

Citation : (2009) 2 GLR 1108

Hon'ble Judges : Rajesh H. Shukla, J; Jayant Patel, J

Bench : Division Bench

Advocate : J.M. Buddhbhatti, Nos. 1 and 2, for the Appellant; K.P. Raval, Addl. P.P. for Opponent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present appeal is directed against the judgment and order dated 14-8-2001 by the Addl. City Sessions Judge, Court No. 9, City Civil and Sessions Court, Ahmedabad in Sessions Case No. 392 of 2000 recording conviction of the appellants-original accused No. 1 (husband) and accused No. 2 (father-in-law) for the offence u/s 302 read with Section 114 of the Indian Penal Code and imposing sentence for life imprisonment. The learned Addl. City Sessions Judge has however recorded acquittal for the offence u/s 498A of I.P.C.

2. It has been submitted by learned Advocate Mr. Buddhbhatti for the appellants-accused that appellant-accused No. 2, father-in-law, has expired, and therefore, this appeal qua accused No. 2 may not survive.

3. The brief facts of the case are as follows:

3.1. It is the case of the prosecution that deceased Ranjanben, complainant wife of accused No. 1, was set ablaze on 6-7-2000 when there was a discussion with regard to the curetting to be done to avoid pregnancy and the child. It is the

case of the prosecution that on 6-7-2000 at about 6-30 p.m. when the deceased was present in the house with the husband, A-1 and father-in-law, A-2, mother-in-law, original-accused No. 3 and elder brother-in-law Mahendrabhai and the discussion was with regard to curetting operation for avoiding pregnancy and the child, at that time, A-1 husband, when she declined to undergo such operation, is said to have started shouting that he does not require her and set her ablaze. Thereupon, A-2 father-in-law, brought a can of kerosene, poured it on the deceased and ignited the match stick, and thereafter, when she started crying for help, all the accused went out and did not try to save her. Thereupon, on hearing her shouts, the neighbours gathered there and put a blanket around her and made her sleep on the cot outside the house. Thereafter, the elder brother of the deceased complainant arrived when he was informed by somebody and also an ambulance was called and she was removed to Shardaben Hospital. Her statement in the form of F.I.R. and dying declaration was recorded in the hospital itself and Head Constable Ratansinh Chauhan had recorded the vardhi and made an entry in the vardhi book on the basis of which the police had recorded the F.I.R. at Exh. 26 at the hospital and the offence was registered being C.R. I. No. 212 of 2000 on the basis of the said vardhi.

3.2. On the basis of the complaint/F.I.R., investigation was carried out. After the investigation was over, charge-sheet was submitted and the Judicial Magistrate (First Class), after ascertaining as regards the papers given to the accused, committed the case to the City Sessions Court, Ahmedabad as offence u/s 302 of I.P.C. was triable by the Court of Sessions.

3.3. After ascertaining as regards the papers made available to the accused, the learned Addl. City Sessions Judge framed charges for the offence under Sections 302 and 498A of the I.P.C. against the accused persons and proceeded with the trial.

4. In order to bring home the charges levelled against the accused, the prosecution has examined the following witnesses:

-----	P.W. Name
Status	Exh.
-----	1.
Vinodbhai Rajabhai Dodia Panch witness reg. 8 the scene of offence	
2. Kaljibhai Ujabhai Chavada Panch witness 9	
3. Dr. Jayantilal Virjibhai Dr. who performed 14 Satpara post mortem	
4. Dr. Nischal Nayak Who made the endorsement 18 about the condition of the deceased patient	
5. Dr. Dhaval Bhavsar Who had treated and also 19 recorded the history given by the deceased on the case papers.	
6. Bharatbhai Mohanbhai Who had recorded the complaint as a Writer 25	

7. Jayantibhai Rathod Brother of the deceased 30

8. Ratansinh Chauhan Head Constable who 32 had recorded the vardhi in the
Vardhi Register.

5. The prosecution has also produced the documentary evidence with the list, Exh. 6 which include the F.I.R. (Exh. 26), panchnama of scene of offence (Exh. 28), inquest panchnama (Exh. 10).

6. After recording of the evidence was over, the learned Addl. City Sessions Judge, Ahmedabad, recorded the further statement of the accused u/s 313 of the Criminal Procedure Code. In the further statement, the accused have denied the charges.

7. After hearing the learned A.P.P. as well as the learned Advocate for the accused, the learned Addl. City Sessions Judge passed the order recording conviction of accused Nos. 1 and 2 for offence u/s 302 of I.P.C. and sentenced them for life imprisonment. However, they were acquitted for the offence u/s 498A of I.P.C.

8. It is this judgment which has been challenged before this Court mainly on the ground, inter alia, that when the complaint was recorded by the police at the hospital, the deceased victim could not be in a fit condition to make such a statement, and therefore, it could not have relied upon for recording the conviction.

9. Heard learned Advocate Mr. Buddhbhatti for the accused persons. Learned Advocate Mr. Buddhbhatti pointedly referred to the material and evidence on record including the medical evidence which is produced on record in the impugned judgment. The learned Advocate referred to the deposition of Dr. Jayantilal Virjibhai Satapra, P.W. 3 (Exh. 14) who had performed the postmortem and made the post-mortem report at Exh. 15. The learned Advocate has specifically emphasized that there are 2 to 3 degree burns and it is also recorded in the post-mortem report, Exh. 15, in Col. 7,

Female about 22 years. Hospital dressing on all over body except face cover with gauze including hands and soles illegible Section at Rt. ankle. Ink mark on great Toe of Lt. Foot scalp hairs out smell of kerosene present.

10. Therefore, learned Advocate Mr. Buddhbhatti submitted that with such extensive burn injuries, whether she was in a fit condition to give the statement/complaint is required to be considered.

11. Again, he referred to the deposition of Dr. Nischal Nayak, P.W. 4 (Exh. 18), who had made the endorsement with regard to the condition of the patient, and submitted that he has admitted that the general condition of the patient was poor and due to such burn injuries the B.P. or pulse could not be recorded.

12. Further, the learned Advocate has also referred to the deposition of Dr.

Dhaval Bhavsar, P.W. 5 (Exh. 19) who had recorded the case history of the deceased and has produced the case papers at Exhs. 20, 21, 22 and 23. The learned Advocate strenuously submitted that the case papers which have been recorded by the doctor who has treated her also referred to 90% burn injuries. Learned Advocate Mr. Buddhbhatti referred to the deposition of Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19) and submitted that he has admitted in the cross-examination that her condition was serious and it is also stated that her condition was deteriorating. She was also given oxygen and i/v fluid, and therefore, in light of this medical evidence, with such 99% burn injuries, whether the statement/complaint recorded by the police could be accepted as dying declaration? He also referred to the case papers at Exhs. 20-23 for that purpose and submitted that in absence of further corroboration, the F.I.R. may not be treated as dying declaration and the Court below has committed an error in accepting the F.I.R. as dying declaration.

13. Learned Advocate Mr. Buddhbhatti, has also referring to the impugned judgment, tried to emphasize and submit that though the deceased has died out of burn injuries, the possibility of suicide or accidental death is also required to be appreciated, which the Court below has not considered and appreciated in light of the material and evidence on record.

14. In support of these submissions he has again referred to the medical case papers and the deposition of Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19), who had treated her. The learned Advocate has also submitted that the panchnama with regard to the scene of offence as well as the recovery of other articles could be there with such marks of smoke even if it is suicide or accidental death. He, therefore, submitted that considering the prosecution case and the fact that the deceased has died out of burn injuries, the Court may consider whether it could be a case falling u/s 302 of I.P.C.

15. Learned Advocate Mr. Buddhbhatti has also submitted that the history given by the complainant herself has been recorded, but her relatives were also present, and therefore, in such a situation, the details may have been given by the relatives.

16. Learned Advocate Mr. Buddhbhatti, therefore, submitted that as the learned Addl. City Sessions Judge has recorded conviction of the accused for offence u/s 302 of the I.P.C. without considering the aspect of any motive or intention and also having not dealt with the aspect of accidental death, the present appeal may be allowed and benefit of doubt ought to have been given to the accused persons.

17. Learned A.P.P. Mr. K. P. Raval referred to the deposition of Dr. Nischal Nayak, P.W. 4 (Exh. 18) and submitted that this witness has been examined who had made the endorsement and in whose presence the F.I.R. has been recorded by the police which is also treated as dying declaration. Referring to the deposition of Dr. Nischal Nayak, P.W. 4 (Exh. 18) he has submitted that the witness as a doctor has specifically stated that the patient was conscious and has also stated

that he has made an endorsement. Further, though he has stated that her condition was poor, he has stated about the fact that the patient was able to make the statement and when the statement was recorded, he was present. Learned A.P.P. Mr. Raval submitted that this deposition has been further corroborated by the deposition of Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19) who has treated the deceased patient and also prepared the case papers recording the history, which are produced at Exhs. 20-23. He has also referred to the case history and submitted that the case papers at Exh. 20 refers to the alleged history and it is mentioned about the "homicidal burn assaulted by the father-in-law." There is also a mention about 99% burn injuries. It refers to, "99% superficial to deep burns". Therefore, he submitted that though there was 99% burn injuries, there was superficial injuries as well as deep burn injuries as recorded in the post-mortem report also.

18. Further, the learned A.P.P. submitted that in these case papers also there is a specific endorsement made by this doctor, "patient is conscious and oriented (sic.)" which is also at the time when she was brought to the hospital at 7 p.m. Thereafter, on Treatment Sheet at Exh. 22 at 7-30 on 6-7-2000 the details are mentioned and there also it is mentioned, "patient oriented but irritable". At 8 p.m. again, there is an endorsement of the doctor, "irritable, oriented". Therefore, the learned A.P.P. submitted that there is constant observation by the doctor and deposition of Dr. Dhaval Bhavsar, who treated her is supported by the case papers.

19. Therefore, it was submitted that the medical evidence is clearly supporting about the condition of the patient when her statement/F.I.R./dying declaration was recorded at Exh. 26. Therefore, again, referring to the F.I.R. given by the deceased herself which is at Exh. 26, he emphasized and submitted that she has narrated about the incident as to how it has occurred. He also submitted that she has specifically stated that she was set on fire by pouring kerosene by accused No. 2 father-in-law, who ignited the match stick, and even thereafter, she has specifically stated that when she cried for help they did not try to save her and they went outside. Further, on hearing her shouts the neighbours had gathered, put a blanket around her and had brought her outside the house and made her lie down on the cot, and thereafter, an ambulance was called and the brother of the deceased also came there.

20. He submitted that this reflects the motive or intention of the accused and this conduct itself is sufficient to draw an inference about the intention, and therefore, it cannot be said that the impugned judgment and order recording conviction of the appellants for offence u/s 302 of I.P.C. is erroneous or without considering this aspect.

21. The learned A.P.P. further submitted that there is consistent evidence with regard to this aspect in the form of vardhi which has been also produced on record at Exh. 33. The deposition of Ratansinh Chauhan, P.W. 8 (Exh. 32) clearly refers to this aspect. The learned A.P.P., referring to the deposition of Ratansinh

Chauhan at Exh. 32, has submitted that as per instruction of the R.M.O. the deceased victim was brought near him and when inquired she had disclosed about the incident on the basis of which he had prepared the vardhi and made an entry in the vardhi register, an extract of which is produced at Exh. 33. Referring to Exh. 33, the learned A.P.P. emphasized that it clearly states about the manner in which the incident has occurred and specifically stating about the role attributed to both the accused. Therefore, there is this evidence which clearly establishes not only the intention but also the manner in which she was set on fire which has been disclosed by the deceased victim first to the police, when on the basis of such disclosure vardhi has been given. She has remained consistent while giving her F.I.R./complaint before the police at Exh. 26. The medical evidence is also supporting the prosecution case as regards her condition, and therefore, the judgment and order recording conviction of the appellants-accused does not call for any interference by this Court.

22. In view of the rival submissions and particularly the submission of learned Advocate Mr. Buddhbhatti for the accused emphasizing about the fact that as the deceased was having 99% burn injuries, the complaint given by her, which is also treated as a dying declaration, is doubtful, needs to be appreciated. The learned Advocate has, therefore, emphasized on reliability of such version stated in the complaint which require a close scrutiny.

23. From the scrutiny of the material and evidence on record, which has been referred to in detail, it is required to be appreciated. The evidence of Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19) is required to be considered. He has stated that he had recorded the case history given by the deceased and in the medical case papers he has recorded the history with his own hand-writing which are produced at Exhs. 20, 21, 22 and 23. In the cross-examination, though a suggestion was made, he has candidly admitted that sometimes the relatives of the patient would also be stating about the history or the reasons as to what had transpired. However, he has clearly stated as regards the condition of the deceased and has stated that her condition was poor and it was deteriorating. However, a close look at the case papers at Exh. 22, which is a treatment sheet, clearly suggests that it has been recorded in detail when it has been mentioned about the condition of the deceased on 6-7-2000 at 7-30 p.m. wherein it has been recorded, "patient oriented but irritable". Then, at 8 p.m., again, it is recorded, "irritable, oriented" and at 8-30 it is recorded, "rapid, shallow respiration", and thereafter, at 8-45 p.m. the deceased is said to have expired.

24. In the case papers at Exh. 20 which refers to recording of the alleged history, it is clearly mentioned, "alleged history of homicidal burns - flame burns - assaulted by father-in-law." At that time it is also recorded, "patient is conscious, oriented "kerosene smell". The same case paper also mentions about "99% superficial to deep burns". It is required to be mentioned, therefore, that the deceased had 99% burn injuries, it was both superficial to deep burn injuries, meaning thereby, that she was severely burned. The doctor who had recorded

the history and treated has clearly recorded from time to time about the condition of the patient not only initially at the time of beginning the treatment, but thereafter also. This evidence of Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19) is further corroborated by another witness Dr. Nischal Nayak, P.W. 4 (Exh. 18), who had made the endorsement as regards the condition of the patient. He has specifically stated that when she was brought to the hospital, he had made the endorsement that the patient was conscious. He has also withstood the cross-examination, though it has been suggested that the condition was serious and it has been clarified that the condition was poor and serious but she was conscious. He has further stated that her complaint/statement was recorded in his presence. Therefore, this medical evidence clearly rule out the possibility of any doubt which is sought to be raised.

25. Further, the prosecution has also examined Ratansinh Chauhan, P.W. 9 (Exh. 32) who was also on duty at the police table at Shardaben Hospital. He has also stated in his deposition that as per the instruction of the doctor, the deceased was brought to him and when he inquired she had stated or narrated about the incident which he had recorded in the register and had also made an entry in the vardhi register which he had brought and the extracts thereof are produced at Exh. 33. The said vardhi (Exh. 33) clearly narrates about the occurrence of the incident wherein the deceased is said to have clearly stated about the incident that when she was at her house, A-2 father-in-law poured kerosene and set her on fire.

26. Therefore, in light of this clear evidence, merely because the submission is made that as she was having extensive burn injuries, she could not have been in a fit state of condition to make such a statement before the police to give her complaint/F.I.R., cannot be readily accepted ignoring or brushing aside the medical evidence and other corroborative evidence including medical evidence in the form of testimony of P.W. 4-Dr. Nischal Nayak (Exh. 18), medical case papers at Exhs. 20, 21, 22 and 23, testimony of P.W. 5-Dr. Dhaval Bhavsar (Exh. 19), vardhi (Exh. 33) and also the deposition of Ratansinh Chauhan, P.W. 8 (Exh. 32).

27. It is well accepted that once the dying declaration is found to be voluntary and reliable and does not suffer from any infirmities, the same can be relied upon.

28. Moreover, the law is settled as it has been observed in a catena of decisions of the Hon''ble Apex Court that to look for corroboration is merely a rule of prudence rather than a rule of law. In any event, the complaint/F.I.R. at Exh. 26, which has been registered before the police and which has been construed as dying declaration, has been sufficiently corroborated by the medical evidence as regards the condition of the deceased victim in the form of testimony of the doctor, who has made an endorsement about the condition of the patient as well as P.W. 4-Dr. Nischal Nayak who has made the endorsement about the condition of the deceased patient and also P.W. 5, Dr. Dhaval Bhavsar, who has treated and also recorded the history given by the deceased on the case papers and also the

case papers - Exhs. 20 to 23. Further, it has been corroborated by the vardhi (Exh. 33) and also the testimony of P.W. 8, Ratansinh Chauhan, Constable at Exh. 32.

29. Therefore, when it is evident that such a declaration was made by the deceased in a fit state of condition, the reliance could be placed on a such a declaration, for which a useful reference can be made to the judgment of the Hon"ble Apex Court (Constitution Bench) in the case of Laxman Vs. State of Maharashtra, , which has laid down the guidelines. The Hon"ble Apex Court, referring to Section 32 of the Evidence Act, has focused on the aspect of appreciation of the evidence and such declaration in background of Section 32 of the Evidence Act. Though, normally, such statements are hearsay, but as and by way of exception such a declaration of dying person is admissible in the evidence, and therefore, the Hon"ble Apex Court (Constitution Bench) has referred to this aspect and has observed:

The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Since, the accused has no power of cross-examination, the Courts insist that the dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case....

A certification by the doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can be established otherwise....

It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the

answers elicited was satisfied that the patient was in a fit state of mind.

30. Moreover, a useful reference can also be made to the judgment of the Hon''ble Apex Court in the case of State of Karnataka Vs. Shariff, wherein the Hon''ble Apex Court has also observed referring to the earlier judgments, that such a declaration need not necessarily be recorded by the Magistrates. The statement of deceased victim recorded by the police personnel in hospital would be reliable. The Hon''ble Apex Court in this judgment has clearly observed that such a declaration could be made before the police personnel in the hospital and the fact that it has been recorded by the police personnel, by itself, is not sufficient to discard, if it is found to be otherwise trustworthy and reliable.

31. Further, a useful reference can also be made to the judgment of the Hon''ble Apex Court in the case of Dashrath @ Champa and Others Vs. State of Madhya Pradesh, , wherein, again, the Hon''ble Apex Court has re-emphasized the guidelines with regard to the D.D. as well as on the aspect of evidential value of the admissibility of such D.D. and the principles behind making such statement admissible in the context of Section 32 of the Evidence Act. The Hon''ble Apex Court has also observed in Para 9 as under:

9. At this juncture, it is relevant to take note of Section 32 of the Evidence Act, which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are : firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party 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 is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice.

It has also been further observed:

The Rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben Vs. State of Gujarat, There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. Munnu Raja and Another Vs. The State of Madhya Pradesh,

32. Further, in the facts of the present case, there is also an endorsement as regards the condition of the deceased patient that she was in a fit state of condition to make the statement and is also corroborated by the deposition of the same doctor who had made such an endorsement. The said witness has further stated that it was recorded in his presence also. Moreover, this statement/complaint, which is also construed as dying declaration before the police, has the same version as recorded in the vardhi given by the deceased before another witness, Ratansinh Chauhan, P.W. 8 (Exh. 32), who was working at the hospital on the police table and he has also stated that she has herself disclosed before him which he had recorded and that on the basis thereof the vardhi was prepared.

33. The Hon''ble Apex Court in a judgment in the case of State of Rajasthan Vs. Parthu, , in similar circumstances had an occasion to consider about the reliability of the dying declaration when the doctor had certified about the fitness of the deceased and also the fact that it was recorded in his presence. The Hon''ble Apex Court had rejected the submissions canvassed by the defence that reliance could not have been placed on such dying declaration. The Hon''ble Apex Court has further observed, referring to the proposition of law,

In view of the aforesaid evidence of the Magistrate and in view of the endorsement of doctor on the police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, the Court sees no justification in the comments of the learned Counsel that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon.

34. It is required to be mentioned that in the present case the doctor who had made an endorsement has been examined and he has deposed that the statement/complaint of the deceased was recorded by the police in his presence which has been treated as dying declaration before the police. The F.I.R. which . is produced at Exh. 26 given by the deceased herself before the police gives the details about the occurrence of the incident as to what had transpired. As rightly emphasized by the learned A.P.P., the conduct of the accused persons is also required to be appreciated. The deceased complainant in her complaint at Exh. 26 while narrating about the incident has clearly stated that on 6-7-2000 at about 6-30 p.m. she was in the house where both the A-1 husband and A-2 father-in-law, mother-in-law and the elder brother-in-law were present. Thereupon, A-1 husband is said to have stated in a discussion about undergoing the curetting operation that as no further child is desired, she should undergo

curetting operation. At that time, when the deceased is said to have refused, A-1 husband started shouting that he does not need her and she should be set ablaze. It is on this provocation and instigation that A-2 father-in-law is said to have poured kerosene on the deceased and applied the match-stick. Not only this, but she has further narrated and stated that when she started crying for help, when she was set ablaze, both the accused Nos. 1 and 2 as well as the mother-in-law and elder brother-in-law went out and they did not try to save her. Further, it has also been stated and narrated that the neighbours, on hearing her shouts for help, came there and covered her with a blanket and made her sleep on the cot outside the house when her brother arrived.

35. This evidence and conduct is required to be appreciated to consider the gravity of the offence while considering on the aspect of the intention. It reflects two aspects that not only the positive act of setting her on fire, but thereafter, when she raised shout for help, the normal reaction on humanitarian consideration would be to save the victim which would have reflected on the attitude of the accused persons. It is required to be noted that in a fit of anger even if some utterance is made or an act is committed like in the present case by A-1 husband, but when ultimately after the act is done, one would have felt concerned and as a normal reaction would have tried to save the deceased. In the facts of the present case, as it has been revealed from the material and evidence, the accused persons deliberately have gone out and have not made any attempt to save the victim. This reflects about the intention and motive on the part of accused persons including A-1 husband, as otherwise he would have tried to save the victim-wife. Therefore, while appreciating the evidence and the conduct of A-1 (husband), there is a clear indication about the motive and intention in furtherance of which the accused persons including A-1 husband had acted upon to set her ablaze.

36. A useful reference can be made to the judgment of the Hon"ble Apex Court in the case of Srinivasa and Ors. v. State by Santebennur Police reported in 2005 (9) SCC 327, where the Hon"ble Apex Court declined to accept similar contention that the accused had put a blanket on her body and taken her to the hospital for immediate medical aid and it has been observed that the fact that she was taken to the hospital or her body was covered with a blanket might have been immediate reaction, but it would not absolve them of the criminal conduct spoken to by deceased Sujatha.

37. It is also required to be mentioned and noted that the panchnama of the scene of offence clearly shows marks of the smoke at different places in the house as is evident from panchnama at Exh. 28. This aspect is also required to be considered in light of the submissions that A-2 father-in-law had set her on fire, but as can be seen from the evidence and the discussion made hereinabove, though the father-in-law had poured kerosene and applied the match-stick, A-1 husband, who was present there, had also not only remained silent but had also joined in such heinous act. It was the duty of A-1 husband to support her or at

least, when A-2 father-in-law had indulged in the act of setting her on fire, he could have thereafter also tried to save her.

38. Moreover, the motive is also very evident inasmuch as the incident started from the discussion regarding undergoing curetting operation as the undesired child was not wanted by the A-1 husband though, in fact, as can be seen from the post-mortem report at Exh. 15, it clearly suggests that she was "containing about 10 week size pregnancy" and that is why, perhaps, she had declined to accede to such a request.

39. Further, as discussed in the impugned judgment, it would not have been desired by her to commit suicide though such a suggestion has been made by way of defence. It is pertinent to note that a young woman with foetus/pregnancy would not like to commit suicide. In any case, it is well accepted that mere raising a plea or defence by itself would not be sufficient unless there is material and evidence brought on record to suggest about the probability of the defence. Therefore, such a theory of suicide raised by of defence, which has not been accepted by the Court below, does not require any further elaboration.

40. Therefore, the submissions which have been made by the learned Advocate for the accused that her complaint/dying declaration before the police at Exh. 26 cannot be relied upon as she was not in a fit and disposing state of mind looking to the burn injuries that she could have given such statement is misconceived. The statement given by her in the form of complaint/F.I.R. at Exh. 26, which is also construed as a dying declaration, has clearly revealed the manner in which the incident has occurred and the prosecution, by sufficient corroboration, has established that she was in a fit and disposing state of mind to give such a statement as discussed hereinabove.

41. Therefore, if the document at Exh. 26, which is also to be construed as dying declaration, is accepted, and which is also corroborated by other evidences as discussed hereinabove, coupled with the fact that the conduct which is reflected and also in view of the testimony of the doctors who had made the endorsement, i.e., Dr. Nischal Nayak, P.W. 4 (Exh. 18) and Dr. Dhaval Bhavsar, P.W. 5 (Exh. 19), who had treated her and recorded the case history in the form of case papers at Exhs. 20 to 23, leaves no doubt and it cannot be said that the learned Addl. City Sessions Judge has committed any error in recording the conviction for the alleged offence u/s 302.

42. It is also required to be mentioned that during the course of the argument it was also submitted that hearing as regards the quantum of punishment was not given while awarding sentence after recording conviction. However, in light of the fact that the minimum sentence prescribed for offence u/s 302 is life imprisonment, it may not have been specifically recorded, which would not make the impugned judgment illegal, and therefore, the said contention cannot be accepted in view of the judgment of the Hon'ble Apex Court in the case of State of Gujarat Vs. Gandabhai Govindbhai, wherein it has also been observed that

when the accused has been sentenced to undergo life imprisonment which is the minimum sentence, it does not require any opportunity of hearing.

43. Therefore, on re-appreciation and scrutiny of the entire evidence and also considering the submissions made by both the sides, we are of the considered opinion that the reasoning given in the judgment and order dated 14-8-2001 by the Addl. City Sessions Judge, Court No. 9, City Civil and Sessions Court, Ahmedabad in Sessions Case No. 392 of 2000 recording conviction of the accused for offence u/s 302 of I.P.C. is just and proper and does not call for any interference by this Court. The judgment and order passed by the learned Addl. City Sessions recording conviction of the accused for offence u/s 302 is hereby confirmed.

44. It is required to be mentioned that accused No. 2, father-in-law, has passed away as noted hereinabove, and therefore, the appeal qua accused No. 2 stands abated.

The appeal hereby stands dismissed.