

(2012) 09 GUJ CK 0105
In the Gujarat High Court
Case No : Criminal Appeal No. 1154 of 2006

Solanki Gautambhai Jethabhai	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Evidence Act, 1872 — Section 27, 8
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2012) 09 GUJ CK 0105

Hon'ble Judges : J.B. Pardiwala, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Shrikar H. Bhatt, for the Appellant; K.P. Raval, APP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice J.B. Pardiwala

1. The present Appeal is at the instance of a convict accused for the offences punishable under Sections 302 and 498A- of the Indian Penal Code, and is directed against an order of conviction and sentence dated 21st February 2006, passed by the learned Principal Sessions Judge, Mehsana in Sessions Case No. 215 of 2005. By the aforesaid order, the learned Principal Sessions Judge found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code and consequently, sentenced him to suffer Life Imprisonment and fine of Rs. 5,000/-. In default of payment of fine, the appellant was directed to undergo further Rigorous Imprisonment for two years. The learned Principal Sessions Judge also found the appellant guilty of the offence punishable u/s 498-A of the Indian Penal Code and consequently, sentenced him to suffer Rigorous Imprisonment for one year and fine of Rs. 500/- In default of payment of fine, the appellant was directed to undergo further Rigorous Imprisonment for one month.

I. Case of the Prosecution :

2. The deceased Jyotsnaben was a lawfully wedded wife of the accused. Marriage of the deceased was solemnized with the accused before 4 years from the date of the incident. During the wedlock a son was born named Chandan. At the time of incident, Chandan was aged around three years. It is the case of the prosecution that the accused had doubts as regards the fidelity of his wife, the deceased, as a result of which, there was maladjustment in the marital life of the deceased and the accused. On 14th August 2005, the deceased was at home at around 10:30 in the morning and at that point of time her husband, the accused, picked up quarrel and assaulted the deceased. Thereafter, the accused is alleged to have sprinkled kerosene on the body of the deceased, and igniting a match-stick, set the deceased on fire. It is also the case of the prosecution that thereafter the accused and the brother of the accused took the deceased to a hospital where the deceased lodged her First Information Report, Exh.14, which was in the form of a Dying Declaration recorded by the police officials. Thereafter, the Executive Magistrate also recorded dying declaration of the deceased, Exh.12.

3. On the strength of the dying declaration of the deceased recorded by the police, investigation commenced. On the next day i.e. on 15th August 2005 at around 14:30 hours, the deceased succumbing to the injuries passed away. Dead body of the deceased was sent for postmortem examination. The postmortem examination revealed that the deceased had sustained 2nd degree to 3rd degree burns on face, neck, front and back of both thighs, both upper limbs, right lower limb, left lower limb upto face. The cause of death was assigned to be shock due to burns. The postmortem report further revealed that the deceased was carrying pregnancy of about 6 1/2 months. Scene of offence Panchnama - Exh.17 was drawn on the date of the incident itself i.e. on 14th August 2005. Arrest panchnama of the accused - Exh.23 was drawn. Inquest panchnama was drawn at Exh.25. Dying declaration of the deceased was recorded by the police officer, which was treated as First Information Report. Dying declaration was also recorded by the Executive Magistrate - Exh.12. Statements of various witnesses were recorded by the Investigating Officer. After arrest of the accused, the accused led the Investigating Officer, in presence of two panch witnesses, at his residence, from where he took out the clothes which he had worn at the time of incident and handed over the said clothes to the Investigating Officer in presence of two panch witnesses. That is how the panchnama of recovery of the clothes of the accused and a container of kerosene -Exh.18 was drawn on 16th August 2005.

4. The Muddamal articles were sent to the Forensic Science Laboratory for chemical analysis.

5. As the case was exclusively triable by the Sessions Court, the JMFC, Kadi committed the case to the Sessions Court u/s 209 Cr.P.C. The Sessions Court framed charge against the accused Exh.2 and statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

6. The prosecution adduced the following oral evidence in support of its case.

PW1

Dr. Kishanbhai Ramabhai Solanki. Medical Officer who performed the Postmortem of the dead body of the Deceased.

Exh. 5

PW2

Dr. Bakul Patel

-Doctor who first treated the deceased at Referral Hospital, Community Health Center, Kadi.

Exh. 7

PW3

William Joseph Macwan. Dy. Mamlatdar & Executive Magistrate who recorded the Dying declaration of

Exh.10

PW4

Rahimmiya Hussainmiya Tank. PSI who recorded the dying declaration at Civil Hospital, Ahmedabad.

Exh.13

PW5

Maganbhai Dahyabhai-Father of the Deceased.

Exh.15

PW6

Gangasagar Mukhlal - I.O.

Exh.16

7. The following pieces of documentary evidence were adduced by the prosecution.

1)

Postmortem Report.

Exh. 6

2)

Medical certificate issued by Community Health Center, Kadi dt. 14th August 2005

Exh. 8

3)

Medical certificate of Jethabhai Hirabhai Solanki -Father-in-law of the deceased,
Issued by C.H.C., Kadi.

Exh. 9

4)

Yadi sent to the Executive Magistrate for recording of dying declaration.

Exh. 11

5)

Dying declaration.

Exh. 12

6)

Original complaint of the deceased.

Exh. 14

7)

Scene of offence Panchnama.

Exh. 17

8)

Panchnama of the Recovery of clothes of the accused and the can of kerosene

Exh. 18

9)

Arrest Panchnama and the Panchnama of the person of the accused.

Exh. 19

10)

Report of the Forensic Science Laboratory.

Exh.21

11)

Panchnama of recovery of clothes of the Father-in-law of the deceased.

Exh. 23

12)

Inquest Panchnama.

Exh. 25

13)

Report filed in the Court of JMFC, Kadi for addition of offence u/s 302 IPC.

Exh. 26

14)

Report of the F.S.L.

Exh. 29

8. After completion of oral as well as documentary evidence of the prosecution, the statement of the accused u/s 313 of Criminal Procedure Code was recorded, in which the accused stated that his wife, the deceased, committed suicide and the charge of murder as levelled against him was false and he was innocent.

9. At the conclusion of the trial, the learned trial Judge convicted the accused for the offence u/s 302 IPC and sentenced him as stated herein before. The learned trial Judge also convicted the accused for the offence punishable u/s 498-A IPC and sentenced him as stated herein before.

10. Being dissatisfied, the accused-appellant has come up with the present Appeal.

II. Oral Evidence on record :

i) PW1 is Dr. Kishanlal Ramabhai Solanki, Exh.5. This witness was serving as a Medical Officer at Civil Hospital, Ahmedabad on 16th August 2005. This witness has deposed that on 16th August 2005, dead body of a lady named Jyotsnaben, the deceased, was brought at the hospital along with the copy of the inquest panchnama for postmortem examination. The PW1 has deposed that he himself, in company of Dr. J.R. Modi, performed postmortem on 16th August 2005. The PW1 has deposed that the postmortem examination revealed that the deceased had sustained 2nd degree to 3rd degree burns on face, neck, chest, stomach, on the rear portion of both the thighs, both upper limbs and both lower limbs upto knee 1/3rd/part of the left leg was burnt. The PW1 has also deposed that the under surface of the foot of both the legs were not burnt. All the injuries were ante-mortem in nature and sufficient in ordinary course of nature to cause death. The PW1 has also deposed that all vital organs were congested. The PW1 has also deposed that there was a foetus of about 6 1/2 months of a baby-girl. Foetus was found dead due to death of the deceased. The PW1 has also deposed that the death was caused due to extensive burn injuries sustained by the deceased. In his cross-examination, the PW1 has deposed that ordinarily the capacity of a person to bear the pain of injuries sustained would depend on the resistance power of such person. If the resistance power goes down, then the person would fall unconscious. He has also deposed that the resistance power would vary from person to person. He has also deposed that it was true that if the oxygen level in

the blood decreases then the blood would clot, resulting into brain hemorrhage. He has also deposed that it was true that due to burn injuries the level of Carbon Monoxide in the body would increase and the level of oxygen would decrease, as a result of which a person would fall unconscious and would not be able to speak. The PW1 has also deposed that under such circumstances a patient would be able to understand but would not be able to speak anything. As a part of the treatment, oxygen would be supplied to the patient including injecting pain-killers. He has deposed that what type of treatment was given to the deceased before her death was not known to him as he had not studied the medical papers in that regard. The PW1 has also deposed that there were no injuries on the rear part of the body of the deceased. There were no injuries even near the ears. Except the hair on the scalp, the other hair were well protected. There were no injuries on the perineum region. The PW1 has deposed in his cross-examination that the injuries could be homicidal as well as suicidal. This witness has proved the postmortem examination report Exh.6.

ii) PW2 is Dr. Bakul Prabhubhai Patel, Exh.7. This witness has deposed that on 14th August 2005 he was on duty as a Medical Officer at Referral Hospital, Community Health Center, Kadi. He has deposed that at around 11 O'clock in the morning, a patient named Jyotsnaben Gautambhai Vankar was brought at the hospital by her husband, the accused, for treatment. The PW2 informed the police on phone in that regard. The PW2 has deposed that the patient was fully conscious and was cooperative. The PW2 has also deposed that she was shouting for water. The PW2 has deposed that he inquired with the patient as what had happened, and in reply, Jyotsnaben, the deceased, is said to have informed the PW2 that her husband, the accused, had first assaulted her by giving fisticuffs and thereafter sprinkled kerosene on her body and set her on fire with a match-stick. The PW2 has also deposed that the patient had a foetus of around seven months. On examination of the patient, the PW2 was of the opinion that the injuries sustained by the deceased were very serious and, therefore, she advised the family members to shift the deceased to the Civil Hospital, Ahmedabad, and accordingly, the deceased was transferred to the Civil Hospital along with the certificate Exh.8. The PW2 has also deposed that on that very day at around 11 O'clock in the night he also treated one Jethabhai Solanki aged around 60 years. In the history, Jethabhai Solanki stated before the doctor, PW2, that on 14th August 2005 at around 10 O'clock in the morning he was sitting beneath a Neem tree and at that point of time his daughter-in-law, the deceased, came running out of her house in a burning condition and caught hold of him, as a result of which, Jethabhai Solanki fell down and his clothes got burnt. On examination of Jethabhai, the PW2 noticed that there were in all six injuries. They were all superficial burns on hand, more particularly, on the knee cap and on the wrist. Jethabhai had also swelling of around 1 x 1 cm on the right hand knee cap and there was a contusion on the left hand thumb of around 1 x 0.5 cm. The PW2 has deposed that all injuries were simple in nature and were possible due to burns. The PW2, in his cross-examination, has deposed that in Certificate - Exh.8

there was no mention of any smell of kerosene coming from the body of the injured Jethabhai. This witness has proved the medical certificate - Exh.9 of Jethabhai Hirabhai Solanki, the father-in-law of the deceased.

iii) PW3 is William Joseph Macwan - Exh.10. The PW3 has deposed that on 14th August 2005 he was discharging his duties as Executive Magistrate in the Metropolitan area of Ahmedabad. He has also deposed that he had been authorized by the State Government to record dying declarations. On 14th August 2005, the PW3 was on duty at Jamalpur Chora and at that point of time an official serving with the Civil Hospital and connected with Shahibaug Police Station came with a Yadi for the purpose of recording of dying declaration of a patient admitted in the Burns Ward of the Civil Hospital. This witness produced the yadi Exh.11. The PW3 has further deposed that on receiving the yadi - Exh.11, he reached the Civil Hospital. After reaching the Civil Hospital, he first inquired with the doctor as to whether the patient i.e. Jyotsnaben was conscious and fit enough to make a statement or not. The Medical Officer on duty certified that the patient was fully conscious and fit enough to make a statement. The PW3 obtained an endorsement of the said nature. Thereafter, the PW3 himself verified as to whether the deceased Jyotsnaben was conscious and fit enough to make a statement and on being fully satisfied he started recording the dying declaration of the deceased. The PW3 has deposed that the deceased stated before him that she was 25 years old and had studied upto 9th Standard. The deceased was doing household work and stated the place of incident to be her house. The deceased Jyotsnaben further stated before the PW3 that her husband, the accused, was regularly fighting with her and was doubting her character. On the date of the incident at around 8:30, her husband, the accused, came home from outside and sprinkled kerosene on her body and set her on fire with a match-stick. She further stated that as she was on fire she rushed outside the house. She further stated that someone threw a quilt on her body, as a result of which, she fell down. Thereafter, her husband, the accused, took her to the hospital at Kadi and from Kadi she was taken to Ahmedabad Civil Hospital. The deceased also stated before the PW3 that at the time of incident she had worn a blouse a petticoat and a polyester sari. The PW3 has deposed that the deceased stated that her husband, the accused, used to physically harass her and it was her husband, the accused, who set her on fire. After recording the dying declaration, the same was read over and was explained to the deceased and the deceased certified the contents of the dying declaration to be true and correct. The PW3 has proved the dying declaration Exh.12. In his cross-examination, the PW3 has deposed that it was true that beneath the hand and the leg no injuries were sustained. A question was put by the Court to this witness as to why the signature of the deceased was not obtained on Exh.12. In reply, the PW3 stated that there was a bandage on both the hands of the deceased. He has also deposed in his cross-examination that it was true that in Exh.12 initially the word "Signature" was written, but thereafter it was striked out and was written "Impression of the thumb". He has also deposed that it was true that there was

some alteration even so far as the time mentioned in the dying declaration was concerned. He has deposed that in the history he did not inquire as to who brought Jyotsnaben from Kadi to Ahmedabad and who all had come to see Jyotsnaben. He has also deposed that there was some alteration in Exh.12 below the signature of the doctor. He has deposed that the endorsement of the doctor was obtained after recording of the dying declaration.

iv) PW4 is Rahimkhan Hussainmiya Tank Exh.4. This witness has deposed that on 14th August 2005 he was on duty at Kadi Police Station. On the strength of Janwajog Entry No. 67 of 2005, investigation was handed over to him by a PSO, named Ramniklal. PW4, thereafter, reached the Civil Hospital and recorded statement of Jyotsnaben, the deceased. PW4 also obtained copy of the dying declaration which was recorded by the Executive Magistrate, Ahmedabad, and along with the said copy, returned to Kadi Police Station, and thereafter, in presence of the Police Inspector Shri J.M. Singh, offence was registered vide C.R.No. 266 of 2005. PW4 has deposed that when he recorded the statement of Jyotsnaben, Jyotsnaben was fully conscious and was able to speak. Jyotsnaben is said to have stated before PW4 that her husband, the accused, is a labourer in a factory and her in-laws are residing next to her house. She further stated that her marriage with the accused was solemnized five years back and during the wedlock, a son was born named Chandan. On the date of the incident at around 10:30 in the morning, her husband, the accused, came home and entertaining doubts as regards her character, the accused started beating her and thereafter sprinkled kerosene on her body and set her on fire. The deceased is also said to have stated before the PW4 in her statement that earlier also she was beaten and was driven out of her matrimonial home. The PW4 has further deposed that before recording the statement of Jyotsnaben, he obtained a certificate from the doctor as regards the condition of Jyotsnaben. The doctor made an endorsement that Jyotsnaben was conscious. In his cross-examination, he has deposed that it was true that it was Jyotsnaben's husband, the accused, who had brought Jyotsnaben at the hospital. He has deposed that it was true that Jyotsnaben had sustained serious burn injuries, however, the PW4 denied the suggestion that Jyotsnaben was not fit enough to make any statement and that the PW4, on his own, took down the statement of the deceased. This witness proved the First Information Report-Exh.14.

v) PW5 is Maganbhai Dahyabhai - Exh.15. He is the father of the deceased. This witness has deposed that on 14th August 2005 he was at his home and he received a phone call on a STD/PCO booth informing him that his daughter had sustained burn injuries and he must reach Ahmedabad immediately. On learning about this, the PW5 reached the house of his daughter-in-law. As the wife of PW5 was working in a factory, she was also informed about the incident and thereafter all of them reached the Civil Hospital. The PW5 has deposed that on reaching the Civil Hospital, they found that Jyotsnaben was conscious, and on asking her, Jyotsnaben is said to have stated that her husband, the accused, beat her, sprinkled kerosene on her body and set her on fire. On the next day his daughter

succumbed to the injuries and passed away. In his cross-examination, this witness has deposed that since the time of marriage till the date of incident no complaint of any physical or mental torture was ever lodged by him against his son-in-law, the accused. He has deposed that his grandson is with the accused. He has deposed that her daughter had studied upto 9th Standard and was working in a factory at Kadi. He denied the suggestion that his daughter was temperamentally very hot. The PW5 also deposed that at the time of the incident, his daughter was pregnant. He has also deposed that his daughter's husband, the accused, was looking after the medical treatment of his daughter. This witness deposed that he was not aware of the fact that at the time of the incident the accused had gone out with his son on a bicycle to buy pan-masala and at that point of time his daughter, the deceased, on her own, poured kerosene on her body and set herself on fire and after being on fire she rushed towards her father-in-law and as she caught her father-in-law in a burning condition, her father-in-law also sustained burn injuries. This witness has also deposed that he was not aware of the fact that at that point of time the accused learnt about the incident and, therefore, came home on a bicycle and thereafter shifted Jyotsnaben to Kadi Hospital. The PW5 has also deposed that it was true that the dead body of her daughter was handed over to the accused for the purpose of cremation. He denied the suggestion that the allegations levelled against the accused as regards mental and physical torture meted out to the deceased was false. He also denied to the suggestion that his daughter Jyotsnaben had committed suicide.

vi) PW6 is Gangasagar Mukhlal - Exh.16. This witness is the Investigating Officer. On 14th August 2005 he was serving as a Police Inspector at Kadi Police Station. He has deposed that on the strength of Janwajog Entry No. 67 of 2005 registered at Kadi Police Station, one Shri R.A. Tank, PSI, went to the Civil Hospital and recorded the First Information Report of Jyotsnaben, the deceased. This witness has deposed that he himself registered the FIR at the police station. This witness, thereafter, visited the place of occurrence, and in presence of two panch-witnesses, a scene of offence panchnama was drawn. He has deposed that the house was divided into two parts, the floor was made up of cow-dung and at one part of the floor there was a puddle of kerosene. A sample soil was collected stained with kerosene as well as control sample from other part of the house was also collected. He has further deposed that as the father-in-law of the deceased had also sustained burn injuries, he was sent for medical treatment at Civil Hospital. The panchnama to this effect was drawn at Exh.17. Statements of different witnesses were recorded. He has deposed that he reached the hospital where he found that the deceased was unconscious and passed away at 14:30 hours. A report was sent for addition of Section 302 IPC, inquest panchnama was drawn. The body of the deceased was sent for postmortem examination. Thereafter, the statements of the parents, brother, sister-in-law of the deceased were recorded. After the postmortem examination, the dead body of the deceased was handed over for the purpose of cremation. The accused was

arrested and a panchnama of the person of the accused was drawn. This witness has deposed that at that point of time the accused is said to have made statement on his own free will and volition that he would like to point out the place where he had concealed a kerosene container. Accordingly, along with two panchas, this witness reached the house of the accused and discovered the container. This witness identified the signature of two panch witnesses in the panchnama Exh.18. The panchnama of the clothes of the accused was also drawn Exh.19. This witness has deposed in his cross-examination that the accused was arrested at Police Station. First, he was interrogated, and thereafter, he was arrested. After arresting, his clothes were changed and were seized accordingly. At that point of time, there was no kerosene smell on the clothes of the accused. He denied the suggestion that the signatures of panch-witnesses were obtained on a ready panchnama and as such no panchnama was actually drawn in presence of the panch witnesses. He deposed that it was true that he recorded statements of persons residing in the neighbourhood of the house of the deceased. He has deposed that the statements of such witnesses revealed that the deceased, after being on fire, rushed out of her house and caught hold of her father-in-law, as a result of which, the father-in-law also sustained burn injuries. He denied the suggestion that at the time of the incident, the accused and his son Chintu had gone out to buy a pan-masala. He deposed that he was not aware of the fact as to whether on the date of the incident, the deceased, Jyotsnaben, wanted to go to her parental home and the accused told her to go on Rakshabandhan day. He denied the suggestion that Jyotsnaben, the deceased, committed suicide by pouring kerosene on her body and set herself on fire.

III. Contentions on behalf of accused-appellant:

Shri Srikar H. Bhatt, learned counsel appearing for the accused-appellant, vehemently submitted that the trial Court committed grave error in finding the accused guilty of murder punishable u/s 302 IPC by relying on the dying declaration of the deceased made before the police as well as before the Executive Magistrate. Mr. Bhatt further submitted that on overall appreciation of evidence, the trial court ought to have considered the defence of the accused on preponderance of probability that the deceased committed suicide by pouring kerosene on her body and thereafter setting herself on fire. Mr. Bhatt further submitted that there is evidence on record that the deceased, in a burning state, came running out from her house and caught hold of her father-in-law, as a result of which, her father-in-law also sustained burn injuries. According to Mr. Bhatt, there is no evidence worth the name that at that relevant point of time the accused was present in the house. Mr. Bhatt further submitted that the fact that the deceased in a burning state came out of her house and caught hold of her father-in-law Jethabhai Solanki stood corroborated by the medical certificate - Exh.9 proved by the PW2 Dr. Bakul Patel -Exh.7. Mr. Bhatt further submitted that the possibility of the deceased falsely implicating her husband, the accused, in the crime due to strained matrimonial relations and with the intention of

ruining the life of the accused could not be ruled out and, therefore, the accused was entitled to the benefit of doubt. Mr. Bhatt urged that the Appeal deserves to be allowed and the order of conviction be set aside.

IV. Contentions on behalf of the State :

11. Mr. K.P. Raval, learned Public Prosecutor appearing for the State, vehemently submitted that the trial Court, on overall appreciation of evidence, oral as well as documentary, has rightly recorded the finding of guilt of the accused for the offence of murder punishable u/s 302 IPC. Mr. Raval submitted that the trial Court committed no error in relying on the two dying declarations of the deceased, one recorded by the Police, Exh.14 and the other recorded by the Executive Magistrate, Exh.12. Mr. Raval submitted that both the dying declarations are consistent and there is nothing improbable, on the basis of which it could be said that the dying declarations were false or that the deceased was not in a fit state of mind to make such declarations. Mr. Raval submitted that on both the dying declarations, the doctor has certified the deceased to be conscious. Mr. Raval submitted that the clothes of the accused were recovered under a panchnama Exh.19. The pant of the accused which was recovered under panchnama Exh.19 was sent to the FSL for chemical analysis. As per the chemical analysis report Exh.29, kerosene was detected on the pant of the accused. According to Mr. Raval, the serological test report showed presence of petroleum hydrocarbons on the pant of the accused. According to Mr. Raval, this is an incriminating piece of circumstance and would fortify the version of the deceased as narrated by her in her dying declarations. Mr. Raval submitted that so far as the panchnama of the recovery of the clothes of the accused, Exh.19, is concerned, the same has not been challenged and was admitted in evidence with the consent of the defence counsel as reflected from the endorsement made by the defence counsel in Exh.4, list of documents produced by the prosecution.

12. Mr. Raval submitted that the trial Court committed no error in disbelieving the defence of the accused that the deceased had committed suicide as the accused did not permit her to go at her parental home and that it was not a case of murder. Mr. Raval lastly submitted that while hearing the accused on the point of sentence, after the trial Court passed the order of conviction against the accused for the offences punishable under Sections 498-A and 302 IPC, the accused made an admission in no uncertain terms that the incident occurred due to grave and sudden provocation and that the accused had otherwise no intention to commit the murder of his wife, the deceased. Mr. Raval submitted that in paragraph 27 of the judgment, the trial Court has recorded the statement made by the accused that after the incident, the accused took his wife, the deceased, for treatment to the hospital and the said aspect be considered by the trial Court in imposing minimum sentence. According to Mr. Raval this is one of the most incriminating pieces of circumstance against the accused in the form an admission of guilt. Mr. Raval urged that this Court, as an appellate Court, may consider this piece of circumstance too along with other pieces of evidences, oral

as well as documentary.

13. Mr. Raval submitted that there being no merit in this Appeal, the same deserves to be dismissed.

14. After hearing the learned counsel for the respective parties and having gone through the entire evidence on record, oral as well as documentary, the only question that falls for our determination in this Appeal is as to whether the trial Court committed any error in finding the accused guilty of the offences punishable under Sections 498-A and 302 IPC.

15. The picture that emerges is that the accused was married with the deceased past five years from the date of the incident and from the wedlock, a son was born to them named Chandan. At the time of the incident, Chandan was aged around 3 years. It appears that the marital relations of the accused and the deceased were not good. The deceased, in her First Information Report Exh.14, had stated that the accused had doubts as regards the character of the deceased. Due to this reason, the accused was harassing the deceased and was torturing the deceased physically as well as mentally. In the dying declaration Exh.14, the deceased had stated that on 14th August 2005 at around 10:30 in the morning her husband, the accused, picked up a quarrel entertaining doubts as regards the character of the deceased and started beating the deceased. The deceased had further stated that thereafter the accused poured kerosene on her body and set her on fire. In the dying declaration Exh.14, the deceased has also stated that in the past, many times she was beaten by her husband, the accused, and at times, to such an extent that people from the neighbourhood used to gather at the house of the deceased. Once the accused had driven out the deceased from her matrimonial home, but thereafter a settlement was arrived at and the deceased was brought back to her matrimonial home. However, the accused kept on harassing the deceased even after settlement. She had further stated in her dying declaration that she was brought to the hospital by her brother-in-law named Maheshbhai, and her husband, the accused. The dying declaration Exh.14 was recorded by a Police Sub-Inspector of Kadi Police Station. On the said dying declaration, there is an endorsement made by the doctor at around 3 pm that the patient is conscious.

16. We have also gone through the dying declaration Exh.12 recorded by the Executive Magistrate. On the dying declaration Exh.12, there is an endorsement made by the doctor at 4:16 hours in the evening that the patient is conscious. The deceased reiterated the same story as narrated by her first in point of time before the police while recording of the dying declaration Exh.14.

17. PW2, Dr. Bakul Prabhubhai Patel, Exh.7, in his deposition, has clearly stated that when the deceased Jyotsnaben was brought at the Referral Hospital and Community Health Center for treatment, she was conscious and co-operative. The PW2 has deposed that she was shouting for water. The PW2 inquired with the deceased as to exactly what had happened, and in reply, the deceased is said

to have told the PW2 that her husband, the accused, beat her with fisticuffs and thereafter poured kerosene on her body and set her on fire. The PW2, Dr. Bakul Patel, has also deposed that at the relevant point of time the deceased was carrying pregnancy of around 7 months. The medical certificate Exh.8 of the deceased issued by the Medical Officer, Referral Hospital and C.H.C., Kadi also records the history of the accused beating his wife, the deceased, and thereafter setting her on fire pouring kerosene on the body of the deceased.

18. PW3, William Joseph Macwan, Exh.10, the Executive Magistrate, has deposed that on receipt of the Yadi from the Police Station, he reached the hospital to record the dying declaration of the deceased. The PW3 deposed that at the time of recording of the dying declaration, the deceased Jyotsnaben was fully conscious, and after being satisfied with the general condition of the deceased to make a statement, the PW3 proceeded to record the dying declaration. In his cross-examination, a question was put by the Court to the PW3 as to why signature had not been obtained of the deceased Jyotsnaben in the dying declaration Exh.12. To this question, the PW3 replied that as the hands were covered with bandages, the signatures could not be obtained. The defence counsel Mr. Bhatt tried to submit that if bandages were there on both the hands then even thumb impression could not have been obtained on the dying declaration Exh.12. Mr. Bhatt made an endeavour to convince us to disbelieve the dying declaration Exh.12 on this count alone. It is very difficult for us to accept the submission of Mr. Bhatt to discard Exh.12 in to only on this ground. It may be possible that due to bandages on both the hands, probably the deceased may have found some difficulty in putting her signature, but that does not mean that she could not have been able to put her thumb impression on the dying declaration.

19. PW4, Rahimkhan Tank, Exh.13, Police Sub Inspector, who recorded the dying declaration first in point of time, has also deposed that at the time of recording of the first information report, the deceased was fully conscious and was able to speak coherently The PW4 has deposed that the doctor also certified the deceased Jyotsnaben to be conscious at the time when the first information report was taken down.

20. We are fully convinced on the strength of the endorsements made by the doctors on Exh.12 and Exh.14 that at the time of recording of the dying declarations, the deceased was fully conscious and was in a fit state of mind. The first information report was taken down at around 3:00 p.m. in the evening and the dying declaration recorded by the Executive Magistrate Exh.12 was at around 4:15 in the evening. Much before recording of the two dying declarations, the deceased had already made an oral dying declaration in the form of history before Dr. Bakul Patel at the Referral Hospital and C.H.C., Kadi. Exh.12 and Exh.14 are consistent with each other and fully corroborated by the oral dying declaration of the deceased in the form of history given to the PW2, Dr. Bakul Patel. We do not find any infirmity worth the name in any of the dying

declarations so as to render the version of the deceased doubtful.

21. PW5, Maganbhai Dahyabhai, Exh.15, who is the father of the deceased, in his evidence, has deposed that on learning about the incident, he reached the Civil Hospital and inquired with her daughter, the deceased, as to what had actually happened. The PW5 Maganbhai has deposed that his daughter, the deceased, at that point of time was fully conscious and his daughter, the deceased, stated before him that the accused assaulted her and thereafter poured kerosene on her body and set her on fire. Nothing substantial could be elicited through the cross-examination of PW5, Maganbhai, so as to render his evidence doubtful.

22. During the course of investigation and after the arrest of the accused at the Police Station, the accused is said to have voluntarily desired to show the place where he had put his clothes worn at the time of incident as well as the kerosene bottle. In presence of two panchas, a panchnama was drawn, wherein the accused led the police officers along with the two panchas to his house and took out the clothes as well as the kerosene container. The clothes and the kerosene container were seized as Muddamal articles. It appears from the Serological Test Report that there was presence of petroleum hydrocarbons on the pant, suggestive of the fact that it was stained with kerosene. This is one another piece of incriminating circumstance pointing towards the guilt of the accused. This part of the evidence has not been challenged by the accused and has been admitted.

23. The evidence of circumstance that the accused pointed out to the Investigating Officer the place where the clothes worn at the time of incident were concealed would be admissible as conduct u/s 8 of the Evidence Act, quite apart from the admissibility of the disclosure statement u/s 27. As the Supreme Court observed in A.N. Venkatesh and Another Vs. State of Karnataka,

By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct u/s 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (Delhi Administration), . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible u/s 27 of the Evidence Act, still it is relevant u/s 8.

24. We have also noticed that the accused made an admission of his involvement in the crime when he was being heard by the trial Court on the point of sentence. According to us, this is also one of the incriminating circumstances on the record pointing towards guilt of the accused. When the accused was being heard by the trial Court on the point of sentence after the order of conviction was pronounced, the accused stated that the incident occurred in grave and sudden provocation

and kerosene was poured on the deceased without any intention to cause her death. The accused tried to salvage the situation by submitting before the trial Court that minimum sentence be imposed on him taking into consideration his subsequent conduct of taking his wife, the deceased, to the hospital, despite the fact that he poured kerosene on his wife and set her on fire due to grave and sudden provocation. This admission is in two parts, one is an inculpatory part and other is an exculpatory part. Admission of inculpatory part can definitely be taken into consideration as it stands corroborated with the other evidence on record, mainly the dying declarations Exh.12 and Exh.14. This admission on the part of the accused came at a point of time when the trial Court could not have taken note of it as the order of conviction had already been pronounced. However, the fact is that the accused did make an admission before the trial Court of the nature as explained above when he was being heard on the point of sentence. As an appellate Court, we can definitely take into consideration this piece of evidence along with the other pieces of evidences on record, pointing a finger towards the guilt of the accused.

25. Further, we are not at all impressed with the defence of the accused that the deceased committed suicide as the accused had not permitted the deceased to go to her parental home even on preponderance of probability. The evidence on record suggests that at the time of the incident, the deceased was pregnant and as per the postmortem report, the foetus was around 7 months old. The deceased could not have taken such a step on her part which would bring an end of a soul which was yet to be born and no mother would go to such an extent to commit suicide knowing fully well that she was carrying pregnancy of 7 months on the ground that the deceased was not permitted by her husband, the accused, to go to her parental home. In any event, the other pieces of evidences completely rule out the theory of suicide. We are convinced that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt and the trial Court was justified in finding the accused guilty of the offences punishable under Sections 498-A and 302 of the Indian Penal Code. We do not find any merit in this Appeal and is accordingly dismissed. The judgment and order of conviction passed by the Principal Sessions Judge, Mehsana, in Sessions Case No. 215 of 2005 is hereby confirmed.