

(2014) 11 GUJ CK 0002
In the Gujarat High Court
Case No : Criminal Appeal No. 654 of 2003

State of Gujarat

APPELLANT

Vs

Bharatsingh Govubha Jadeja and Others

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209 225 24 25-A 313
Evidence Act, 1872 — Section 113A 113-A
Penal Code, 1860 (IPC) — Section 107 108 114 148 149

Citation : (2015) 1 GLR 751

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : H.S. Soni, A.P.P., Advocate for the Appellant; Manraj A. Barot, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.

1. The present appeal, under Sec. 378(1)(3) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 27-1-2003 passed by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No. 3 of 2000, whereby the accused persons have been acquitted of the charges leveled against them. This Court on 19-7-2006 admitted present appeal against the respondent No. 1. 2. The brief facts of the prosecution case are as under:

2.1. The deceased Bhavnaba, wife of Bharatsinh Govubha Jadeja (original accused No. 1), has filed complaint on 17-10-1999 before P.S.I. (Investigation) of Jamnagar City "B" Division Police Station by disclosing the fact that she was staying with her husband, father-in-law and mother-in-law at village: Targhadi Devliya, Ta. Khambhaliya. Her husband is a driver and her marriage span was of 9 months from the date of incident. As per the complaint, after one month of marriage, the accused No. 1, husband of the complainant, said to the complainant that he did not want her and she would go to her parental home and

the accused also beaten her oftenly and meted out cruelty. Even the sisters-in-law were staying there and they instigated the accused No. 1 against the complainant. Even the husband of the complainant was beating her with the handle of axe. On the festival of Satam and Atham (Janmasthami), the complainant came at her parental home and after the said festival, the brother-in-law (Nandoi) namely Mansangbhai, of the complainant came there to bring her at matrimonial home, at that time, the mother of the complainant told about the behavior of accused and his parents. Therefore, after coming at the house of the accused with the complainant, said Mansangbhai instigated the accused about say of the mother of the complainant. Therefore also, the accused had beaten the complainant and the complainant also told the said fact to her parents. On 16-10-1999, at about 8-00 p.m., the accused was prosecuting to Mata Na Madh at Kutch by the jeep car of his elder brother and at that time, his elder brother told the accused to bring the complainant with him. Therefore, the accused told him that the accused did not want this woman (complainant) and if she would come at Kutch, the accused will kill her with knife, and thereafter, the accused had beaten her by saying that she would go to her parental home. Thereafter, the accused had gone to Kutch by jeep, and thereafter, the complainant felt very bad and due harassment mental and physical caused by the in-laws and accused, the complainant poured kerosene on herself from the primus and set her on fire in the house and due to burn injuries, she shouted, and therefore, her sister-in-law rushed there, and thereafter, she was shifted to the Hospital at Jamnagar, where she was treated and at that time she was conscious. Her parents also came at the hospital and due to harassment and cruelty meted out by the in-laws and accused, she had committed suicide, so the complaint was registered as 0/99, then it was transferred to Khambhaliya Police Station for registration purpose, and thereafter, during the course of medical treatment, the complainant expired, so offence under Sec. 306 of the Indian Penal Code was added and further investigation was carried out by the P.I. Mr. Sarvaiya, and drawn the panchnama - scene of offence, inquest panchnama was carried by the Jamnagar "B" Division Police Station. It is pertinent to note that the deceased was having 5 months pregnancy at the time of committing suicide. The statements of witnesses were recorded and accused were arrested. The axe was recovered by way of panchnama and then charge-sheet was filed against the accused. Learned Judicial Magistrate, First Class, Khambhaliya, has committed the said case to the Court of Sessions, Jamnagar, under Sec. 209 of the Code of Criminal Procedure and the copy of the charge-sheet was given to the accused and charge was framed for the offences punishable under Secs. 498A, 306, 506(2) and 323 read with Sec. 114 of the Indian Penal Code. Then statements were recorded by the learned Sessions Judge and Sessions Case was listed for evidence.

2.3. To prove the case against the present accused, the prosecution has examined witnesses:

2.4. The statement under Sec. 313 of the Code of Criminal Procedure were recorded, wherein the accused stated that the false complaint is filed against

them and they have been wrongly implicated in the alleged offence. They have also stated that due to pain in stomach, the deceased committed suicide and at instance of the family members of the deceased, the charge-sheet was filed against them.

2.5. At the end of trial, after hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 27-1-2013.

2.6. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the concerned trial Court, the appellant-State has preferred the present appeal.

2. It was contended by learned A.P.P. that the judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondent. Learned A.P.P. has also taken this Court through the oral as well as the entire documentary evidence. Learned A.P.P. has read the charge at Exh. 9 and submitted that from the said charge, the allegations made against the present respondent No. 1, the prosecution has proved the abetment, instigation and provocation made by the respondent No. 1 to the deceased. He further read the complaint recorded by the P.I. produced at Exh. 26 and submitted that from the beginning of the marriage, the deceased was not kept well by the respondents and there was some dispute and the accused No. 1, who used to tell that he did not want her (wife) and the deceased would go to her parental home. On 16-10-1999, when the respondent-accused was going to Mata Na Madh at Kutch, and at that time, his elder brother told him to take the deceased with him, so the accused respondent told him that he did not want her and if she (deceased) would come with him, he will kill her with knife and he further told that the deceased would go to her parental home and she was beaten by him, and thereafter, he went away by jeep car to Kutch. Due to such conduct on the part of the accused, the deceased committed suicide. Learned A.P.P. further stated that when the deceased was under treatment at the Hospital, the Duty Head Constable sent yadi at Exh. 22 at 5-00 a.m. to the Executive Magistrate, and the Executive Magistrate went to the hospital and after making inquiry from the nurse and Doctor, instructed to record dying declaration of Bhavnaba. Therefore, the said Bhavnaba was examined by the Medical Officers, who were present there and informed the Magistrate that said Bhavnaba was totally conscious and she was fit to give her statement and Doctor has made endorsement about her consciousness and dying declaration of the deceased was recorded. Learned A.P.P. read dying declaration at Exh. 23, which was recorded by P.W. 3-Dhirubhai Masrubhai Kuvadara and stated that the Doctor has made endorsement in Exh. 23 dying declaration and certified about the consciousness of the complainant and was able to give her statement. Therefore, it is established that the complainant was fit for recording her statement before the

Magistrate. Learned A.P.P. further stated that as per the evidence of this witness P.W. 3-Executive Magistrate, the marriage span of the deceased was of 9 months and her husband (accused) was not calling her and yesterday (a day before the incident), quarrel picked up by the husband with the deceased and she was beaten by the husband and she was told to kill yourself (deceased) by burning. Therefore, the deceased set her on fire. She also stated in the statement that her husband went to Kutch and she was shifted in the hospital by her in-laws. Learned A.P.P. further stated that the marriage life of the deceased and accused was of only 9 months. She was not called by her husband and she was not considered as his wife from beginning of the marriage life. Learned A.P.P. further submitted that when the married wife is neglected by the husband then the conduct of the husband is required to be considered and it is required to be noted that the husband has meted out cruelty upon her. Learned A.P.P. further read the contents of the dying declaration and submitted that as per the evidence of the deceased, it is prima facie established that husband accused was always beating the deceased and the husband meted out cruelty to her. Said fact is also stated by the complainant-deceased herself in her complaint recorded at hospital. Learned A.P.P. further stated that from the cross-examination of the said witness P.W. 3, it appears that the defence has never made any attempt to establish that the deceased was not in a position to speak properly and she was not conscious. Learned A.P.P. further contended that the panch witness P.W. 1-Mansukhlal Vallabhdas, panch Exh. 17 is examined by the prosecution to prove panchnama, scene of offence at Exh. 18 and same was proved by this witness and he was cross-examined by the defence. Learned A.P.P. also read the contents of inquest panchnama at Exh. 20 and oral evidence of P.W. 2-Gambhirsinh Jivubha Jadeja, Panch witness and he was cross-examined by the defence.

3. Learned A.P.P. has also submitted that originally the complaint was given by the deceased to P.S.I., Jamnagar Police Station and that complaint was sent to P.S.O. and he has registered that offence as 0/99 and said complaint was also proved through oral evidence of P.W. 4-Pushpaben Ranchhodbhai at Exh. 25 and she was also cross-examined by the defence and she has no personal knowledge about the same. Learned A.P.P. further stated that the P.S.I., Investigating Officer, who was public servant and in his official capacity, the complaint was written down by him. Learned A.P.P. Mr. Soni drew the attention to the oral evidence of father of the deceased who is examined at Exh. P.W. 5-Prabhatsinh Kesubha and it appears that he was won over by the respondent-accused as he has not stated real facts in his oral evidence. Learned A.P.P. further submitted that when the said witness was won over by the respondent, his wife P.W. 6-Hullasba examined at Exh. 31, has not disclosed anything as per the case of the prosecution and she was declared hostile. Learned A.P.P. also further submitted that as the witness i.e. P.W. 5 and P.W. 6 turned hostile, P.W. 7-Bhikhuba Prabhatsinh Chudasama at Exh. 32 was declared as hostile. Learned A.P.P. further submitted that P.W. 8-Kusumba is examined at Exh. 33, P.W. 9-Gumansinh Kesubha Chudasama, uncle of the deceased, Exh. 34, P.W. 10-

Pavanba Gumansinh Chudasama, aunt of the deceased, Exh. 35, all were also turned hostile. Therefore, it appears that all the witnesses were won over by the respondent-accused, but that is not sufficient to fatal the case of the prosecution. Learned A.P.P. further stated that the complainant before the police disclosed that the alleged offence was committed by the respondent-accused, husband, which was written down by the public servant and same was instructed for registration of the complaint. When the yadi was served to the Executive Magistrate, he immediately rushed to the hospital and obtained oral and written opinion of the Doctors regarding consciousness of the deceased and from the dying declaration of the independent witness, who is public servant, it is prima facie established that behavior of the accused to the deceased was totally cruel and he caused mental and physical harassment to the deceased, and thereby, it can be said that the accused abetted the deceased to commit suicide. Learned A.P.P. also read the provision of Secs. 107 and 108 of the Indian Penal Code and Sec. 113A of the Evidence Act and contended that the prosecution has established its case beyond reasonable doubt. The marriage span was only 9 months and also as per the provisions under Sec. 498A of the Indian Penal Code, the meaning of cruelty is covered by the conduct and behavior of the accused, and therefore, ingredients of the said Secs. 498A of the Indian Penal Code and 113A of the Evidence Act are attracted to the accused. Learned A.P.P. further submitted that willful conduct of the respondent-accused was of such nature, compelled the deceased to commit suicide and same is established as per the contents of the compliant as well as dying declaration, as the accused caused harassment to the deceased mentally and physically. Further, learned A.P.P. read the oral evidence of P.W. 11-Bansidhar Ganpatlal Gupta, who has carried out post-mortem of the deceased Bhavnaba, at Exh. 36, wherein he disclosed contents as stated in post-mortem note at Exh. 38 and cause of death and he supported the prosecution case. But it is really surprised fact that this material witness was not cross-examined by the defence side. Learned A.P.P. drew the attention to the oral evidence of P.W. 12-Balvantsinh Dhirubha Sarvaiya at Exh. 39, P.S.I., wherein this witness has stated that the compliant was received from Jamnagar "B" Division Police Station and it was registered at Khambhaliya Police Station and investigation was carried out by him. The complaint was registered as CR 0/99 and then it was registered before Khambhaliya Police Station and further investigation was carried out. Learned A.P.P. further contended that the panchnama, scene of offence and inquest panchnama, both are proved. He also submitted that it is admitted by this witness that the family members of the deceased, who had declared hostile and they have not disclosed the true facts in their evidence. Learned A.P.P. read the evidence of P.W. 13-Sudhir Gulabray Maheta at Exh. 51, Professor of Surgery and Head of Unit of the hospital, wherein said witness has stated that Dr. Ketan Mehta, who was serving at Unit No. 6 as Assistant Professor and he had given medical treatment to the deceased and preliminary inquiry made by him from the deceased and the contents were noted by Dr. Sandip in the case-papers and said case-papers are exhibited at Exh. 44 and same is identified by this witness as well as the endorsement, which

was made by Dr. Sandip at Exh. 41 that the patient (complainant/deceased) was fit to give her statement and she was conscious. Even said endorsement is proved as the same is made in the dying declaration at Exh. 23. Learned A.P.P. also read the statement recorded under Sec. 313 of the Code of Criminal Procedure and submitted that after consulting the family members of the deceased, who have been won over by the accused and declared hostile witnesses, later on after thought, the said witnesses have not disclosed the fact before the learned Judge and from the said statement, it is revealed that there is no explanation about the incident and the accused stated that the allegations leveled against him are false and bogus and due to pain in stomach, the deceased committed suicide by setting her on fire due to instigate by some one against the accused. Learned A.P.P. further stated that the dying declaration made before the Executive Magistrate as well as the complaint recorded by the police officer of the deceased herself, and both the witnesses have stated in their evidence the said facts which are corroborated with the contents of dying declaration and complaint, then it can be said that the accused has committed alleged offence and said evidence of both witnesses and dying declaration and complaint are supporting evidence to prove the case against the accused. But even though, the learned Sessions Court has observed that the prosecution has failed prove alleged offence committed by the accused and other co-accused. He also submitted that the learned Judge has not rightly observed and discussed in detail the impugned judgment and order the fact about the complaint and dying declaration as well as case history given by the Doctor. Learned A.P.P. read the F.I.R. given by the deceased herself and dying declaration and as per his submission, that the both were made by the deceased herself. The presumption under Sec. 113A of the Evidence Act, which prescribes legality in connection with the F.I.R. and dying declaration. Even though, learned Sessions Judge has not considered such evidence in favour of the prosecution and wrongly acquitted the accused i.e. present respondent. He has argued that the Hon"ble Apex Court has laid down that mere span is within the provisions of Sec. 113A of the Evidence Act, then presumption is required to be drawn in favour of the prosecution. He has prayed that the learned Sessions Judge has committed grave error in passing acquittal order in favour of the accused. He further submitted that now-a-days, this is fashion in the society to cause mental and physical cruelty to the women and thereby instigated to commit suicide due to lenient view taken by the Court. He lastly submitted that the ingredients of the alleged offence under Secs. 498A and 306 of the Indian Penal Code are very well proved against the accused, and therefore, the impugned judgment and order of acquittal is required to be quashed and set aside in the interest of the justice and the accused is required to be convicted for the alleged offence.

4. Per contra, learned Advocate Mr. Barot appearing for the respondent, supported the impugned judgment and order of acquittal and submitted that learned Sessions Judge after appreciating the evidence on record and considering the submissions made by the parties, passed the impugned judgment and order

of acquittal, and therefore, no interference is required by this Court. He submitted that the ingredients of Sec. 498A or even of Sec. 306 of the Indian Penal Code are established against the accused and in absence of any cogent proof against the accused, the learned Sessions Judge has rightly considered the acquittal of the accused for the charges leveled against them. He further submitted that as per the settled law, the case is not proved in connection of the oral evidence of the Executive Magistrate and Police Officer so far as dying declaration and complaint of the deceased are concerned. He further submitted that the witnesses i.e. family members of the deceased are declared hostile before the learned Sessions Judge and they disclosed the fact that the deceased committed suicide due to stomach pain, then there is no reason to believe the case of the prosecution. He also submitted that the respondent-accused in the statement under Sec. 313 of the Code of Criminal Procedure, stated that some body has instigated the deceased to describe accused negative role for the incident of suicide, and therefore, the deceased has wrongly implicated the accused in the commission of the offence. He read the oral evidence of the Executive Magistrate and police officer and argued that the said witnesses are not properly cross-examined by the defence, and that creates some negative role against the respondent-accused. He further read the evidence of the medical expert and argued that from the contents of the case-history as per the complaint given before the police and dying declaration recorded by the Executive Magistrate or dying declaration itself creates some doubt. Therefore, the dying declaration is not considered as trustworthy, reliable and acceptable. He read the impugned judgment and order passed by the learned Sessions Judge and submitted the learned Sessions Judge has rightly observed that the prosecution has failed to prove its case beyond reasonable doubt. He also read the contents of the F.I.R. and dying declaration and submitted that it is the duty of prosecution to establish that due to abetment, harassment, instigation on the part of the accused, the deceased committed suicide. In the absence of such material aspects like instigation, abetment, provocation on the part of the accused, the accused cannot be held guilty, and therefore, learned Sessions Judge has rightly acquitted the accused, and therefore, he prayed to dismiss the Appeal and confirm the judgment and order of acquittal passed by the learned Sessions Judge.

5. Learned Advocate Mr. Barot in support of his submission, relied upon the decision in the case of Sharda Vs. State of Rajasthan, , Head Note B, Paras 30, 31, 35 and 36. In that case, the Hon"ble Apex Court observed that there were three dying declarations and the deceased had not implicated the accused in first two dying declarations and in third dying declaration, the deceased implicated the accused, and therefore, the Hon"ble Apex Court has not considered the same as the base for conviction. He therefore, submitted that in the present case, same ratio would be applicable and the accused may not be convicted on the basis of alleged dying declaration. Herein in the present case, dying declaration recorded at Exh. 23 and complaint given by the deceased herself at Exh. 26 and

in both these documents, the deceased has implicated the accused for causing cruelty upon her and the contents stated in both the documents, regarding allegations about the cruelty are corroborating with each other. Secondly, in the case cited by the learned Advocate, the third dying declaration was of overwriting and tutored, and therefore, same is not considered the sole base for conviction. Here in the present case, there is no overwriting or tutored and it is also not established that the deceased had given said dying declaration due to instigation of someone. Therefore, facts and evidence of cited case and of the present case are totally different and so, same is not applicable to the case of the present matter. Learned Advocate Mr. Barot further relied upon the decision of this Court in the case of Somabhai Ganeshbhai Parmar Vs. State of Gujarat, , Head Note B, Para 45 and submitted that this Court has acquitted the accused by holding that the conviction could not have been based on the two dying declarations as relied upon by the trial Court. He submitted that in view of the observation made by this Court in that case, present appeal is required to be dismissed as the same ratio is absolutely applicable to the present case. Here in this case, the Sessions Court has not considered the dying declaration as base for conviction. I have minutely perused the said decision, especially Para 45, and in that case, this Court has considered the material aspect of correctness of the dying declaration, and therefore, the said evidence is not considered for the sole base of conviction. In that case, the accused was having illicit relationship with order lady, and therefore, deceased committed suicide, but, herein this case, the accused was beating the deceased and was causing mental and physical harassment by saying that he does not want her and she (deceased) would go to her parental home from the beginning of the marriage. Therefore, the allegations alleged by the deceased in the dying declaration against the accused are directly proved and even the accused did not call the deceased from the marriage and in this case, the marriage span was of only 9 months. Even in the present case, the offence was registered under Secs. 498A and 306, whereas in that case, offence was registered under Sec. 302 of the Indian Penal Code. Therefore, the ratio laid down in that case is not applicable to the present case.

6. Learned Advocate Mr. Barot placed reliance on the decision of Surinder Kumar Vs. State of Haryana, , and submitted that in that case, the Hon"ble Apex Court has not considered dying declaration as the base of evidence and the conviction and sentence ordered by the High Court was set aside. In that case, the deceased got 97% burn injuries, whereas in present case, the deceased got 98% burn injuries. I have perused the same and in the said case, it is observed by this Court that the dying declaration suffers from infirmities and the deceased was under constant sedatives and she was not conscious. Here in the present, no doubt the deceased got burn injuries to the extent of 98%, but she was conscious and she was fit to give statement before the Executive Magistrate and the Medical Officer has also endorsed the same in dying declaration. After certifying by the Doctor, her dying declaration was recorded, therefore, it is believed that the deceased was fit at the time recording her dying declaration

and even she herself gave compliant before the police in the hospital and in both i.e. complaint as well as dying declaration, she narrated the same allegations against the accused. Therefore, the principle laid down in the cited case is not applicable to the present case. Learned Advocate Mr. Barot further placed reliance on the decision in the case of Smt. Laxmi Vs. Om Prakash and Others, , and submitted that in that case, the Hon"ble Apex Court has considered all the dying declarations, while confirming the order of acquittal. He also stated that the condition of the victim was not proper and she was not enable to speak anything due to burn injury. In the present case, there is no question of infirmity in the dying declaration of the deceased because the Medical Officer has endorsed about consciousness of the deceased while recording the dying declaration and same is also established from the version of the Medical Officer as well as from the dying declaration itself. Learned Advocate has also relied upon decisions in the case of Ramesh Kumar Vs. State of Chhattisgarh, , and submitted that in this case, the Hon"ble Apex Court has not considered the offence under Sec. 306 of the Indian Penal Code. He also submitted that the Hon"ble Apex Court has not considered the dying declaration and nothings made in the diary and also held that there is no evidence and material on record wherefrom an inference of the accused having abetted the commission of suicide by deceased may necessarily be drawn. I have perused the said case and looking to the facts and circumstances of that case, and especially, the offence under Sec. 306 of the Indian Penal Code is not established against the accused, but the offence under Sec. 498A is proved and sentence passed thereon were maintained. Here in this case, the cruelty meted out by the accused upon the deceased are very well proved without there being any fault on the part of the accused. From the beginning of marriage, the accused had not called the deceased and told her that he did not want her and go to her parental home. The conduct of accused about non-speaking to his wife is also one kind of cruelty. Here in this case, the allegations are very well proved by the evidence which were made by deceased in the hospital and she was absolute conscious at that time, and therefore, she narrated the averments in dying declaration, which were stated in the complaint. Therefore, the cited case is not applicable to the present case.

7. Learned Advocate Mr. Barot submitted that the considering the facts of the case and decisions cited by him, it can be said that the accused has not committed alleged offence and the witnesses except two/three, all are declared hostile and they have not supported the case of the prosecution, and therefore, the impugned judgment and order of acquittal is required to be confirmed by dismissing present appeal.

8. Perused the judgment and order as well as evidence produced on record and considered the submissions made by the learned Advocates for the parties. The accused married with the deceased Bhavnaba before 9 months from the incident and from the very beginning of the marriage, the accused did not call her and he used to tell the deceased that he did not want her and go to the parental home,

without there being any reason or fault on the part of the deceased. This conduct clearly shows that the accused was very rude person and such behavior led the deceased to commit suicide. It is true that when the deceased committed suicide, she was having pregnancy of five months. It is also an admitted fact that the deceased committed suicide by pouring kerosene on herself and set her on fire and at the time before the incident, the accused had beaten her and taunted her, and thereafter, he went to Mata Na Madh at Kutch by leaving the deceased. Thereafter, the incident in question immediately took place after beating deceased by the accused. I have perused the evidence of P.W. 1-Mansukhlal at Exh. 17, wherein he stated that he is panch witness of panchnama of scene of offence and he identified the signature of himself as well as panch Prabhatsinh in the panchnama P.W. 2-Gambhirsinh at Exh. 19, who is panch, has stated that a lady namely Bhavnaba received burn injuries and inquest panchnama was carried out in his presence. P.W. 3-Dhirubhai Masrubhai Kuvadara is examined at Exh. 21, he is Deputy Mamlatdar and Executive Magistrate at Jamnagar and he stated that at 5-00 a.m. in morning hours, on 17-10-1999, he received Yadi from the hospital, where the deceased was admitted, for recording of the dying declaration. He immediately went to the hospital and after making inquiry from the nurses and Doctors about the consciousness of the deceased, he started to record dying declaration of the deceased. The deceased told him that the marriage span of deceased and accused was of only 9 months. She poured kerosene on herself due to cruelty meted out by the accused, who is husband of the deceased. She also stated that the accused did not call her during marriage span of 9 months and the accused had beaten her and caused harassment by taunting that he did not want her. On the day of incident, she was beaten by her husband and told her that to kill herself by burning, and thereafter, her husband went away from the place of incident and proceeded outside i.e. Mata Na Madh, at Kutch. Even the said witness further inquired about reason of suicide, the deceased stated the said fact that due to cruelty meted out by the accused, she committed suicide. She also stated that her in-laws were harassing her. This witness also stated that after recording the dying declaration, the Medical Officer has made endorsement on the same about consciousness of the deceased at the time of recording of the dying declaration and said deceased Bhavnaba made her thumb impression on the same. P.W. 3-Pushpaben is examined at Exh. 25, has stated that she was In-charge P.S.O. of Khambhaliya Police Station and she received complaint being numbered as 0/99 for registering the F.I.R. before the said Police Station. In the F.I.R., she made her signature and further investigation was handed over to P.S.I. Sarvaiya and in cross-examination, she stated that she had no personal knowledge about the complaint. Thereafter, P.W. 5-Prabhatsinh, Exh. 30, P.W. 6-Hullasba Prabhatsinh, Exh. 31, P.W. 7-Bhikhubha Exh. 32, P.W. 8-Kusumba Exh. 33, P.W. 9-Gumansinh Exh. 34, P.W. 9-Pavanba Exh. 35 have not disclosed the facts before the Court, and thereby, not supported the case of the prosecution and they were won over by the respondent. But from the evidence of these witnesses, one thing is very clear that the deceased committed suicide by pouring kerosene on herself and set her

at fire, and therefore, it is not an accident case. I have also perused the oral evidence of P.W. 11-Bansidhar Exh. 38, wherein he described injuries on the person of deceased. Thereafter, P.W. 12-Balvantsinh Sarvaiya Exh. 12, who is P.S.I., and Investigating Officer, has supported the case of the prosecution and he stated that the accused and in-laws of the deceased caused mental and physical harassment to the deceased and the accused was beating the deceased with the handle of axe and even the accused had beaten the deceased due to instigation of co-accused. P.W. 13-Sudhir Maheta Exh. 51 has stated that the deceased was conscious at the time of admitting in the hospital due to burn injuries and she was fit to give her statement before the Executive Magistrate and the Medical Officer has made endorsement on the dying declaration at Exh. 23 and Exh. 41, which is yadi about the condition of the deceased. I have also perused the documentary evidence produced on record. Especially, the complaint which was given by the deceased herself and dying declaration, wherein she alleged about the conduct of the accused towards her, and therefore, she committed suicide. Thereafter, offence as alleged was registered against the accused.

9. From the perusal of the case, it appears that the accused had not called the deceased from the marriage time of 9 months. The behavioral psychology of the accused of not talking to the opposite side can result into negativity. In the present case, a newly wedded wife, within the span of only 9 months of marriage life, and when she was neglected by her husband for a long period, means that the accused meted out cruelty, and thereby, abetted the deceased to commit suicide. It is natural that a lady, who is pregnant, may not think to commit suicide during pregnancy period in the interest of her unborn child. This behavior of the accused shows that there was tremendous provocation on the part of the accused which led the deceased to commit suicide. Cruelty means unprovoked conduct towards one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. Here in this case, the accused had not committed only mental cruelty, but he also meted out physical cruelty to the deceased, and therefore, the deceased took decision to end her life by committing suicide. Said ingredients of provocation, instigation are covered by Sec. 306 of the Indian Penal Code. I have perused the provisions of Secs. 306 and 498A as well as Sec. 107 of the Indian Penal Code and also perused provisions of Sec. 113A of the Evidence Act and I have perused the difference of the provisions of laws. Here in the present case, the willful conduct on the part of the accused is proved, as the accused intentionally neglected his wife by not calling her from the marriage upto the incident, which was driven the wife to commit suicide. The cruelty is sufficiently proved against the accused as per the provisions of Sec. 498A of the Indian Penal Code. Therefore, it can be said that cruelty on the part of the husband is proved by the provisions of Sec. 113A of the Evidence Act, as abetment on the part of the husband-accused led the wife to commit suicide. Abetment means a person abets the doing of a thing who instigates a person to

do that thing. In this connection, I have perused the case of Thanu Ram Vs. State of M.P., . In this case, the victim committed suicide in 4th year of marriage when she was six month's pregnancy. Normally, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. Only in extreme circumstances may a woman decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life. In the said case, the Hon'ble Apex Court has confirmed the conviction order passed by the High Court and trial Court by considering the dying declaration, as there was no ambiguity and irregularity in the dying declaration. Here in this case, there is no any irregularity or ambiguity in the dying declaration, as the same was given by the deceased in her absolute conscious position and she was fit to give the statement before the Executive Magistrate and also she gave her complaint in very conscious position before the police. Therefore, there is no question to discard this evidence given by the deceased herself before dying in the hospital. Therefore, the offence as alleged against the accused is very well proved. The admissibility of dying declaration is based on the principle that a man will not meet his maker with a lie and can be relied on.

10. In this connection, I have also perused the case of State of M.P. Vs. Babulal and Others, , Head Note "A" which is as under:

"Criminal Trial - Sentence - Principles for sentencing - Proportionality - Principles summarized - Duty of Court while awarding sentence - What is - Misplaced sympathy not warranted - Reiterated, one of prime objectives of criminal law is imposition of adequate, just, proportionate punishment, which is commensurate with gravity and nature of crime and manner in which offence is committed - Most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind social interest and consciousness of the society - It is a mockery of criminal justice system to take a lenient view, showing misplaced sympathy to accused on any consideration whatsoever, including delay in conclusion of criminal proceedings - Punishment should not be so lenient that it shocks the conscience of society, being abhorrent to basic principles of sentencing - Thus, it is solemn duty of Court to strike a proper balance while awarding sentence, as awarding a lesser sentence encourages a criminal as a result of same society suffers - Hence, sentence of 2 yrs" S.I. under Sec. 148, Secs. 324/149, 326/149 I.P.C. which had been reduced to 3 months" S.I. restored to 2 yrs" S.I."

11. In the aforesaid case, learned Apex Court has observed that punishment should not be so lenient that it shocks the conscience of the society being abhorrent to the basic principles of sentencing. Therefore, it is clear that the accused is required to be punished for his offence and for such purpose, the lenient view should not be taken by the Court while sentencing the accused for the alleged offence which is committed by him and same is proved against him.

12. In the case of Vinod Kumar Vs. State of Kerala, , the observation made by

the Hon"ble Apex Court in Head Note "C" is as under:

"Criminal Trial - Prosecution - Generally - Role of, is to unravel truth and bring to book person guilty of offences and not to sentence innocent - Criminal Procedure Code, 1973, Secs. 24, 225 and 25-A."

13. In view of the above, I am of the opinion that the accused abetted the deceased to commit suicide, and therefore, the accused is required to be convicted as he is not innocent person. Looking to the facts of the case, during course of marriage span of 9 months, the accused did not call or talk with the deceased and oftenly he said that he did not want her and go to her parental home. Besides this, the accused caused cruelty upon her by beating with the handle of axe and taunting every day and even at the last moment of the deceased i.e. when the quarrel pick-up, the accused had beaten the deceased and taunted her, and thereafter, the accused went away to Kutch by leaving her at home. Thereafter, the incident was occurred and deceased narrated in her complaint as well as dying declaration about the cruelty meted out by the accused and her in-laws. In these circumstances, the accused is liable to be convicted and sentenced for the alleged offence.

14. I have taken into consideration the provisions of Sec. 498A of the Indian Penal Code as well as Sec. 113A of the Evidence Act, which are quoted as under:

"Sec. 498-A: Husband or relative of husband of a woman subject her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

"Sec. 113-A: Presumption as to abetment of suicide by a married woman - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has subject her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

15. From the bare reading of Sec. 498A of the Indian Penal Code, it is clear that if the husband or relative of the husband of a woman subject such woman to cruelty, they shall be liable for punishment mentioned therein. Moreover, the Explanation to Sec. 498A Indian Penal Code defines "cruelty" for the purpose of Sec. 498A I.P.C. to mean (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or (b) harassment of the woman where such harassment, is with a view to concerning her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. A reading of Sec. 113A of the Evidence Act, 1872 will show that

for the purpose of Sec. 113A, the "cruelty" shall have the same meaning as in Sec. 498A of Indian Penal Code. Hence, to convict a husband or any relative of the husband of a woman or to draw up presumption as to abetment of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman within a period of seven years from the date of her marriage there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in clause (a) or (b) of the Explanation to Sec. 498A of the Indian Penal Code.

16. I have perused the meaning of cruelty and as per Oxford Dictionary, it defines "cruelty" as "qualify of being cruel disposition of inflicting suffering, delight in or indifference to another's pain, mercilessness, hard-heartedness. Even the definition of cruelty has been defined in the Black's Law Dictionary as "Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health or mental health of the other spouse. Here in the present case, from time of marriage, the deceased was neglected by the accused and he was not calling her during marriage span of 9 months, which shows cruel nature of the accused, and it is very well covered in the meaning of cruelty.

17. In view of the above position and facts of the case, it is well established that the accused has instigated the deceased, and thereby, he abetted the deceased in committing the suicide. It is also established that from beginning of the marriage, the accused and his family members caused mental and physical cruelty, and therefore, the deceased put in a critical condition and lastly, she herself set her at fire by pouring kerosene and ended her life at a very younger age. Here in this case, the P.Ws. 5 to 9 turned hostile and they have not disclosed real facts, but to decide this case, the material evidence is the complaint, which was given by the deceased herself at the hospital, and secondly her dying declaration, which was given by her in her full conscious condition and even endorsement was made by the Medical Officer for her fitness to give statement in form of dying declaration before the Executive Magistrate and also the evidence of independent witnesses like Executive Magistrate P.W. 3-Dhirubhai Kuvadara Exh. 21, Police Officer P.W. 12-Balvantsinh Sarvaiya Exh. 39 and even the evidence of P.W. 13-Sudhir Gulabray Maheta Exh. 51 and they are also corroborated with the complaint and dying declaration which were given by the deceased, it is fit case to convict the accused - respondent for the offence punishable under Secs. 498A and 306 of the Indian Penal Code. In view of the above observation, following order is passed:

This appeal is allowed.

The impugned judgment and order of acquittal dated 27-1-2003 passed by the learned Additional Judge, Jamnagar, in Sessions Case No. 3 of 2000 is hereby quashed and set aside. The respondent-accused No. 1-Bharatsinh Govubha Jadeja accused is hereby convicted for the offence punishable under Secs. 498A and 306 of the Indian Penal Code.

The respondent-accused No. 1-Bharatsinh Govubha Jadeja is sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/-, in default, the accused is ordered to undergo further three months rigorous imprisonment for the offence punishable under Sec. 498A of the Indian Penal Code.

The respondent-accused No. 1-Bharatsinh Govubha Jadeja is sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default, the accused is ordered to undergo further five months rigorous imprisonment for the offence punishable under Sec. 306 of the Indian Penal Code.

The period during which the accused remained in prison, shall given set off.

The respondent-accused is hereby ordered to surrender before the concerned Jail Authority within a period of four weeks from today.

R. & P. to be sent back to the concerned trial Court forthwith.