

**(2013) 07 GUJ CK 0033**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 906 of 1996**

State of Gujarat

APPELLANT

Vs

Himatbhai Rambhai Vaghsia and Another

RESPONDENT

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**Date of Decision :** 10-07-2013

**Acts Referred:**

**Citation :** (2013) 3 GLR 2528

**Hon'ble Judges :** Abhilasha Kumari, J

**Bench :** Single Bench

**Advocate :** K.L. Pandya, Addl. P.P, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Abhilasha Kumari, J.—This appeal is directed against the judgment and order dated 27-3-1996, rendered by the learned Sessions Judge, Court No. 17, Ahmedabad City, in Sessions Case No. 369 of 1991, whereby the respondents (original accused) have been acquitted of the charges under Secs. 498A and 306 of the Indian Penal Code ("I.P.C." for short). Respondent No. 1 is the husband of deceased Muktaben whereas respondent No. 2 was her mother-in-law, who has since died. The appeal qua respondent No. 2, therefore, has abated.

2. Briefly stated, the case of the prosecution, based upon the complaint made by deceased Muktaben on 1-9-1991, is to the following effect:

The deceased was married to respondent No. 1 about eleven years before her death. She had two daughters aged 9 and 7 years and a son, aged 4 years, from the said wedlock. For about a year after her marriage, the deceased was treated well. However, thereafter, respondent No. 1 would not give the deceased sufficient money to run the household and whenever she used to ask for money, he used to beat her. Fed up with this physical harassment, the deceased often went to the house of her parents and stayed there for about two months or so. As the father of the deceased was not financially strong, he used to console the deceased and send her back to her matrimonial home. This happened about

twice or thrice.

It is further the case of the prosecution that respondent No. 1 used to doubt the character of the deceased and accuse her of going with other man and beat her for that reason, as well. The deceased suffered such beatings twice or thrice. The deceased had last visited the house of her parents during the month of "Vaishakh" and told them about the torture meted out to her by respondent No. 1. On that visit, the deceased had stayed there for about 2? months. Her brother Bhikhubhai, had escorted her back to the house of respondent No. 1 just a month before the incident took place. The deceased has stated in the complaint that on the day of the incident at about 4-00 p.m., respondent No. 1 told her he was going to the factory to get his salary. He is further stated to have told the deceased that he does not want to keep her and would purchase a bus ticket to send her back to her parents' house. Respondent No. 1 then left the house on a bicycle. Thereafter, at about 5-30 p.m., the deceased sent her three children to play at the back of the house. She locked the front and back doors of the house from inside and spread a mattress on the floor. She sprinkled kerosene from a can on the mattress, floor and on the clothes she was wearing and set herself ablaze with a matchstick. The deceased started screaming and fell down near the Sofa. On hearing her screams, several people came and banged on the door. The door opened after some time and people poured water on the deceased and extinguished the flames. After this, respondent No. 1 arrived and took her to the hospital in a vehicle. The deceased has stated in her complaint that she is fully conscious and has committed suicide, as respondent No. 1 frequently beats her and does not give her sufficient money to run the household. Further, he harasses her by doubting her character. She has stated that she has taken the extreme step, being fed up of the ill-treatment meted out to her by respondent No. 1. The deceased has further stated in the complaint that she has suffered severe burns and her eyes have also got burnt and she cannot see anything. She has stated that she cannot sign on the complaint as both her hands are bandaged but as her thumb is open, she is putting her thumb impression. An endorsement has been made on the complaint by a Doctor on 1-9-1991, at 7-00 p.m., to the effect that the statement has been given by the deceased herself, in his presence, and that she was fully conscious and oriented during the declaration. The complaint was registered as I.C.R. No. 413 of 1991, with Naroda Police Station.

3. After commencement of the investigation, statements of witnesses were recorded and an inquest was held on the body of the deceased. An Inquest panchnama (Exh. 36), as also the panchnama of the scene of offence (Exh. 34), were prepared and the body of the deceased was sent for autopsy. At the end of the investigation, as sufficient incriminating material was found against the respondents, they were charge-sheeted by the learned Metropolitan Magistrate, Ahmedabad. As the offence under Sec. 306 of the I.P.C. is exclusively triable by the Court of Sessions, the learned City Sessions Judge, Court No. 17, Ahmedabad City (hereinafter referred to as "the trial Court"), to whom the case

was made over for trial, framed the charge at Exh. 2, which was read over and explained to the respondents who denied the allegations and claimed to be tried. Accordingly, the trial in the case commenced. After recording the statements of the prosecution witnesses, the incriminating evidence appearing against the accused was put to them. In their statements under Sec. 313 of the Code of Criminal Procedure, 1973, the accused denied their guilt. The trial Court, after appreciation of the evidence adduced by the prosecution, recorded a finding of acquittal in favour of the respondents. Aggrieved thereby, the State is in appeal.

4. Respondent No. 1 has been served with notice but has not put in an appearance before this Court.

5. Mr. K.L. Pandya, learned Additional Public Prosecutor, has vehemently submitted that the impugned judgment and order has been rendered without appreciating two important pieces of documentary evidence, such as the complaint made by the deceased herself and her Dying Declaration. It is submitted that what has weighed with the trial Court is that the relatives of the deceased have turned hostile. However, there is no reason to disbelieve the declarations made by the deceased in the complaint and the Dying Declaration as she would not state an untruth on her death bed. It ought to have been considered by the trial Court that the deceased was conscious and well-oriented at the time of making the complaint, as has been endorsed by the Doctor. The deceased has also put her right thumb impression on the complaint, therefore, this document can be taken to be her first Dying Declaration. It is further submitted that the Executive Magistrate has made an endorsement that the deceased was conscious when the Dying Declaration was being recorded. The deceased has answered all the questions asked by the Magistrate and has stated that she has committed suicide as respondent No. 1 was forcing her to go to her parental house.

6. It is next submitted that the medical papers reveal that the patient was conscious between 8-00 p.m. to 10-00 p.m. on 1-9-1991, when the Dying Declaration was recorded. It is only thereafter that her condition started deteriorating. The learned Additional Public Prosecutor further submits that as the trial Court has not taken into consideration the facts and evidence in proper perspective, it has resulted in a wrongful finding of acquittal, therefore, the impugned judgment and order be quashed and set aside and the appeal allowed.

7. In support of its case, the prosecution has examined five witnesses and produced documentary evidence. At this stage, it would be appropriate to examine the salient features of the oral and documentary evidence on record.

8. P.W. 1, Vallabhbhai Gopalbhai Patel, is the brother-in-law (sister's husband) of the deceased. His deposition is at Exh. 13. He states that the deceased did not face any harassment from respondent No. 1. He further states that he has neither seen respondent No. 1 ill-treating the deceased nor has he heard anything to this effect from others. As per the deposition of this witness, on

1-9-1991, at about 9-00 p.m., he received information that the deceased had got burnt. He went to the hospital, accompanied by his wife, where respondent No. 1 was present. He saw that the deceased was in a state of unconsciousness. Thereafter, the Police came there. This witness states that the deceased could not speak properly and her treatment was going on. An injection was being given to her on her arm and saline was being administered. This witness further states that his wife told the police of what was to be recorded in the complaint and asked them to register it. This witness categorically states that the Police have themselves written down the complaint and taken the thumb impression of the deceased while she was unconscious. The Police made certain inquiries from this witness. He further states that he gave a statement to the effect that the deceased was being harassed by respondent No. 1 in a fit of anger and the Police recorded this statement. This witness denies the suggestion that respondent No. 1 tortured the deceased or doubted her character.

In cross-examination, this witness states that the deceased has three children and respondent No. 1 has arranged for one house in Mayur Park Society for them. He further states that the Doctor administered injections to the deceased in his presence and gave her medicines.

Though, this witness has not supported the case of the prosecution and has resiled from his earlier statement given to the Police, he has not been declared hostile.

9. P.W. 2, Govindbhai Jagabhai Patel, is the father of the deceased, whose deposition is at Exh. 14. This witness has stated that the married life of the deceased was good and she did not face any torture from respondent No. 1. Neither did the deceased inform this witness regarding any harassment and nor has he heard anything in this regard from others. He states that respondent No. 1 did not get along well with his other Son-in-law P.W. 1, therefore, P.W. 1 had got the complaint registered, due to animosity. This witness further states that in fact, the complaint of Muktaben has been recorded by the Police as per the dictates of P.W. 1. He states that after she got burnt, he came to know that the deceased had never regained consciousness. Thereafter, she died in the hospital. This witness has been declared hostile.

In cross-examination, this witness confirms he had intervened to get respondent No. 1 to arrange a house for the children of the deceased. He states that respondent No. 1 has put the house in the name of the children.

10. P.W. 3, Dr. Kirit Laxmidas Sheth, is the Doctor who has treated the deceased. His deposition is to be found at Exh. 20. He had brought the medical papers regarding the treatment of the deceased along with the list of medicines that were given to the deceased, and read out the medicines that were administered. He has further stated that the deceased was brought to the hospital at 7-00 p.m. on 1-9-1991, and she died on 2-9-1991 at 5-25 a.m. The deceased was continuously under treatment till her death.

11. P.W. 4 is Navnitbhai Sundarbhai Parmar, the Executive Magistrate who recorded the Dying Declaration of the deceased. His testimony is at Exh. 25. This witness states that on 1-9-1991, he received a "Yadi" from Naroda Police Station at 8-30 p.m., at his house, regarding the recording of a Dying Declaration. On receipt thereof, he went to the Civil Hospital, met the Doctor on duty, made inquiries regarding the patient and went to the ward of the deceased. This witness states that there was an endorsement of the Doctor on the "Yadi" which he had perused. Thereafter, this witness went to the deceased, in order to ascertain whether she was conscious. He found the deceased was fully conscious, and started making preliminary inquiries. He then recorded the Dying Declaration. This witness states that he commenced recording the Dying Declaration at 9-25 p.m. and completed it at 9-50 p.m. This witness narrates the questions asked by him and the answers given by the deceased. He states that to the question whether any person was giving her mental and physical torture, the deceased has replied that her husband and mother-in-law are torturing her. As per the testimony of this witness, the Dying Declaration has been recorded by him in his own hand-writing and the deceased has put her thumb impression on it, in his presence. He identifies his signature on the Dying Declaration.

In cross-examination, this witness states that when he went to record the Dying Declaration, he did not talk to the nurse on duty. He has recorded about 150 Dying Declarations, previously. He states that the prescription sheet is usually affixed on the bed, near the head of the patient. He further states that he did not ask the nurse about the effect of the medicines on the mental capabilities of the deceased and did not peruse the chart on which the names of the medicines were written. This witness further states that he did not try to find out whether any medicine was being administered to the deceased that would make her unconscious, or about the duration of the effect of such medicine. This witness states that before recording the Dying Declaration, he asked preliminary questions to the deceased for about five minutes. He admits that he has not inquired from a Doctor why injections such as "Calmpose", "Fortwin" and "Nonohit" have been given to the deceased or what their effect would be. This witness further states that he did not ask the Doctor whether the effects of "Calmpose" and "Fortwin" injections would remain for a period of four hours. He admits that while recording the Dying Declaration, no other person was present. He further admits that he has not taken the endorsement of either the nurse or the Doctor, on the Dying Declaration. He denies the suggestion that the deceased was unconscious at the time when the Dying Declaration was being recorded.

12. P.W. 5, Ramsevak Ramratan Dubey, is the Investigating Officer. He has been examined at Exh. 29. He states that the complaint of the deceased was taken during her treatment and was recorded as per the say of the deceased. The complaint is in the hand-writing of his Writer Mohabatsinh and the deceased has appended her thumb impression upon it, in his presence. This witness further states that the Doctor has made an endorsement upon the complaint stating that it has been given in his presence. Thereafter, the complaint has been registered.

He further states that he sent the "Yadi" to the Executive Magistrate to record a Dying Declaration and as soon as the Executive Magistrate arrived, he showed him the patient and went out of the room.

In cross-examination, this witness states that when he reached the hospital, the deceased was under treatment and saline was being administered to her. This witness states that he does not know which injections were being administered to the deceased in the saline and did not make inquiries in this regard from the Doctor. He further states that he did not ask the Doctor or the nurses regarding the nature of the treatment and medicines being administered to the deceased. He admits that he did not see the prescription of the medicines given to the deceased. He states that he arrived about fifteen minutes after the treatment of the deceased had started and took down her statement. He also admits that he did not ask the Doctor regarding the duration of the effect of the medicines being administered to her. He states that he does not know whether he made inquiries whether any tranquilizer had been given to the deceased, or not. He further states that he came to know that the deceased had suffered 100% burns. He adds that the deceased was experiencing a burning sensation, and was screaming. He volunteers that he was asking questions and the deceased was answering them and the complaint was recorded in 45 minutes. He further adds that the endorsement of the doctor was taken after the recording of the complaint was over, in his presence. It has been signed by the Doctor and the date and time have been put on it. This witness further states that in the Inquest Panchnama, it is not mentioned that there was ink on the thumb of the deceased. He denies the suggestion that the deceased had been administered tranquilizers to make her sleep when the complaint was being recorded and the Executive Magistrate had arrived.

13. The Doctor who has performed the post-mortem on the body of the deceased has not been examined. The post-mortem report is at Exh. 37. It is stated therein that "the cause of death is shock of burns over body and its complications". No marks of any external injury are found, as stated in Column No. 17 thereof. The deceased had suffered first, second and third degree burns, which were found over her entire body including her face, neck, chest, abdomen and pubic perineal regions. The entire back and both upper limbs were also burnt. No fractures were found on the body of the deceased, as stated in Column No. 18. The deceased suffered 100% burns as per the medical papers at Exh. 23. The deceased has stated in the complaint at Exh. 30, that she has been severely burnt and as both her eyes have got burnt, she is unable to see. It is recorded in the Inquest Panchnama at Exh. 36 that both the hands and legs of the deceased were bandaged and there were bandages from her neck to the waist.

14. The above, is the oral and documentary evidence produced by the prosecution. Upon appreciation of the evidence, the trial Court found that the Dying Declaration could not be relied upon as the testimony of P.W. 4, the Executive Magistrate, reveals that he had not ascertained whether the deceased

was in a fit state of mind at the time of its recording. The trial Court has further found that the compliant has been recorded in suspicious circumstances, as P.W. 3 has stated in his deposition that the deceased was unconscious while it was being recorded. On the basis of the above findings, the trial Court has acquitted the respondents.

15. An independent appreciation of the oral and documentary evidence by this Court brings to light certain glaring aspects, that are discussed hereinafter.

16. As per the medical papers at Exh. 23, the deceased was brought to the hospital on 1-9-1991 at 19-05 hrs., that is, 7-05 p.m., with 100% first, second and third degree burns. There appears to be a discrepancy of five minutes in the time of her admission which is not material. As recorded in the medical papers, the deceased poured kerosene over herself and set herself ablaze at about 5-30 p.m. on 1-9-1991. An endorsement has been made by the Doctor at 7-00 p.m. that the patient is conscious and well oriented. The next endorsement is made at 8-00 p.m. on the same day, wherein it is recorded that the general condition of the patient is "fair". The next endorsement, made at 10-00 p.m., states that the general condition is "poor" and the pulse is "feeble" though the patient is "conscious in pain". It may be noted that the complaint at Exh. 30 has been recorded at 7-00 p.m., that is, immediately on her being brought to the hospital. There is an endorsement by the Doctor below the complaint which reads as below:

1-9-1991 7-00 p.m.

This statement has been given by the patient herself in my presence. Pt. was fully conscious and oriented during the declaration.

Sd/- illegible (Dr. A. Sendhil)

17. In the complaint, the deceased has stated that she has been burnt very severely and even her eyes have got burnt. Her eyes were closed and she could not see. In spite of this, she has stated that both her hands are bandaged but the thumb is open, therefore, she is appending her thumb impression on the complaint. In the original record, there is a thumb impression which is stated to be the right thumb impression of the deceased. In this context, the Inquest panchnama at Exh. 36 is relevant, wherein it is stated that both the hands and legs of the deceased were bandaged and there were bandages from the neck to the waist of the deceased. There is no mention in the Inquest panchnama regarding the right hand thumb of the deceased being free of bandages and neither is there any mention of an ink mark on her right thumb. This fact has been admitted by P.W. 5, the Investigating Officer, in his cross-examination.

18. The testimony of P.W. 1, Vallabhbbhai Gopalbbhai Patel, brother-in-law (sister's husband) of the deceased may be noticed in this context. He has stated that he received the information that the deceased had got burnt after 9-00 p.m. on 1-9-1991 when he was at his house. Thereafter, he went to the hospital,

accompanied by his wife. When they saw the deceased, she was unconscious. She could not speak and her treatment was going on. According to this witness, the Police arrived at the hospital after him. This witness has further deposed that his wife and he had dictated the contents of the complaint to the Police, who recorded it. He reiterates that the Police took down the complaint and took the thumb impression of the deceased, when she was unconscious. This witness further states that he had given his statement to the Police in a fit of anger. This portion of his evidence is corroborated by P.W. 2, Govindbhai Jagabhai Patel, father of the deceased, who has stated that P.W. 1 did not get along well with respondent No. 1, therefore, he had given a statement to the Police that respondent No. 1 was harassing the deceased. P.W. 1 has not been declared hostile.

19. If the sequence of events as narrated by P.W. 1 is considered, it casts a serious doubt regarding the recording of the complaint at 7-00 p.m., as he has stated that he received information regarding the deceased burning herself after 9-00 p.m. on 1-9-1991. Thereafter, he went to the hospital. He has clearly stated that the Police arrived after he reached the hospital and the complaint was recorded as per his and his wife's dictates, by the Police. He has categorically stated that the deceased was unconscious at the time of recording the complaint.

20. The medical papers at Exh. 23 reveal that the deceased was admitted to the hospital at 19-05 hrs. (7-05 p.m.). The endorsement made by the Doctors regarding the general condition of the deceased start from 7-00 p.m. on the same day. There is a discrepancy of five minutes which does not appear to be significant. However, considering the serious condition of the deceased, it is not probable that the complaint was recorded immediately on her being admitted to the hospital. The deceased had suffered 100% burns. In all probability, she would have been examined by the Doctors first and admitted to a ward, before starting the treatment. It is highly unlikely that the complaint would be recorded even before the treatment commenced. This aspect casts a doubt about the manner in which the complaint has been recorded. The deceased had lost her eyesight, as she has herself stated in the complaint. This being so, it is unlikely that she would have known that her right thumb was not bandaged, as stated by her in the complaint. The veracity of this statement is not borne out by the Inquest panchnama, wherein it is recorded that both the arms and legs of the deceased were bandaged and there were bandages from her neck upto her waist. It is not mentioned in the Inquest panchnama that the right thumb of the deceased was without a bandage or that an ink mark was seen thereupon. This aspect makes it doubtful whether the complaint has been given by the complainant herself or has been recorded in her name at the behest of some other person.

21. P.W. 1 has clearly stated that the deceased was unconscious when he arrived at the hospital and the Police have taken her thumb impression while she was unconscious. There is no reason to disbelieve the testimony of this witness, who

is the brother-in-law of the deceased. The prosecution has also not thought it fit to declare this witness hostile.

22. Another aspect that emerges is that the endorsement made on the complaint by the Doctor is regarding the consciousness of the deceased at 7-00 p.m. The deceased was conscious when she was admitted at 7-00 p.m., as per the medical papers. However, as it is difficult to believe that the complaint could have been recorded immediately on the deceased stepping into the hospital, this endorsement loses its effect. When exactly the complaint was recorded becomes doubtful.

23. The medical papers (Exh. 23) reveal that the condition of the patient started deteriorating after 8-00 p.m. The general condition of the deceased is recorded as "fair" at 8-00 p.m., whereas at 10-00 p.m., the general condition is stated to be "poor" and the pulse is stated to be "feeble". The deceased is stated to be "conscious in pain". This is the period between which the Dying Declaration at Exh. 28 has been recorded.

24. From the testimony of P.W. 4, the Executive Magistrate who recorded the Dying Declaration, it is clear that he has not taken the opinion of a Doctor to the effect that the deceased was in a fit state of mind to understand the questions asked to her and to give coherent reply before recording the Dying Declaration. From the testimony of this witness, it is evident that the Doctor did not examine the deceased before the Dying Declaration was recorded, or even after that. The Executive Magistrate has himself appended a note and endorsement on the Dying Declaration to the effect that he has ascertained before recording the Dying Declaration that the deceased was conscious and while the Dying Declaration was being recorded, the Police and relatives of the deceased were not present. The testimony of this witness further reveals that he made no attempt to inquire from the Doctor regarding the medication/injections administered to the deceased or whether any tranquilizers had been given to her to ease her pain. Instead, he has stated that he had asked the deceased certain questions and found her consciousness when he started recording the Dying Declaration. According to this witness, the thumb impression of the deceased was taken on the Dying Declaration in his presence. In cross-examination, this witness has admitted that he has not inquired from the Doctor whether the deceased was in a fit state of mind before recording the Dying Declaration. Though this witness has denied the suggestion that the deceased was conscious at the time, his testimony is in conflict with the testimony of P.W. 1, who states that she was unconscious when he arrived at the hospital after 9-00 p.m. It may be noted that the recording of the Dying Declaration commenced at 9-25 p.m. and was completed at 9-50 p.m. The testimony of P.W. 1 also refers to this period of time. It is clear from the testimony of this witness that he was present in the hospital during this period of time and had found the deceased to be unconscious. The "Yadi" was received by the Executive Magistrate at 8-40 p.m., as per his deposition. It may be possible that the deceased was conscious at the

time when the "Yadi" was written. However, her consciousness and fitness of mind to record the Dying Declaration at 9-25 p.m., has not been ascertained, at all.

25. The deceased had suffered 100% first, second and third degree burns and was on heavy medication, as is evident from the testimony of P.W. 4, the Executive Magistrate and P.W. 5, the Investigating Officer. The medical papers reveal that her general condition started deteriorating from 8-00 p.m. onwards and became consistently worse until she died at 5-25 a.m. on 2-9-2011. Viewed in the background of the facts emerging from the evidence on record, the fitness of mind of the deceased to make the Dying Declaration assumes great relevance. There is no conclusive evidence to prove that the deceased was fully conscious or in a fit state of mind to record the Dying Declaration.

26. In this context, it would be relevant to take note of a judgment of the Supreme Court in Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, wherein the Apex Court has held as below:

8. The main question is as to whether she was conscious and was in a fit mental condition to make a voluntary disclosure of the incident. Dr. K. Vishnupriya Devi (P.W. 10) who was attached to Tenali Government Hospital examined Smt. Venkata Ramana on 4-3-1994 at 1-30 p.m. She then sent a requisition (Exh. P-9) to the Magistrate Shri K. Lakshamana Rao (P.W. 13) to record the dying declaration of the injured. All that Dr. K. Vishnupriya Devi has stated is that the injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It has come on record that Smt. Venkata Ramana had sustained 90% burn injuries. K. Lakshamana Rao (P.W. 13) who recorded the dying declaration has made a note in Exh. P-14 the dying declaration after putting some preliminary questions to the injured and it reads as under:

On the basis of answers elicited from the declarant to the above questions, I am satisfied that she is in a fit disposing state of mind to make a declaration.

Thereafter, the learned Magistrate proceeded to record the dying declaration. At the end, Dr. K. Vishnupriya Devi (P.W. 10) has appended a certificate saying "patient is conscious while recording the statement". The question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to make a declaration in the absence of a certificate by the doctor certifying the state of mind that existed before recording the dying declaration. In our opinion, in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. It is a case of circumstantial evidence and only circumstance relied upon by the prosecution is dying declaration.

(Emphasis supplied)

As per the dicta of the Supreme Court in the above-quoted judgment, consciousness and fitness of mind are distinct conditions which the Doctor should certify. If the certification of the Doctor is only about consciousness and not about the patient being in a fit state of mind before the Dying Declaration is recorded, it would not comply with the requirement of certification, as one may be conscious but not necessarily in a fit state of mind. In the present case, though there is an endorsement of the Doctor on the complaint that the patient is conscious and well-oriented, there is no certification that she is in a fit state of mind to record the complaint. Insofar as the Dying Declaration is concerned, there is no certification by a Doctor at all, even regarding consciousness, as the deceased has not been examined by a Doctor before it was recorded. Only the Executive Magistrate has endorsed that before recording the Dying Declaration, he has ascertained that the deceased was conscious. As stated by the Supreme Court in the above judgment, consciousness is not synonymous with fitness of mind. In view of this serious lacuna in the Dying Declaration, its reliability and creditworthiness is considerably eroded and this piece of evidence, as well as the complaint, have rightly not been taken into consideration by the trial Court.

27. Insofar as the recitals in the complaint and the Dying Declaration are concerned, the deceased has stated in the complaint that respondent No. 1 did not give her sufficient money to run the household and whenever she demanded money from him, he used to beat her. The second allegation against respondent No. 1 is that he used to doubt her character. Insofar as the Dying Declaration is concerned, the deceased does not state anything regarding her husband not giving her sufficient money or doubting her character. However, the reason for her suicide as stated in both the complaint and the Dying Declaration is that respondent No. 1 wanted to send her back to her parental house and was going to purchase a bus ticket. The deceased has stated that she got angry at this and took the extreme step. Even if the recitals in the complaint and the Dying Declaration are taken at their face value, they do not reveal a history of continuous harassment, torture, cruelty or physical and mental torture and instigation, as is required for a conviction under Secs. 498A and 306 of the I.P.C. It transpires from the complaint that the deceased had just returned from her parents' house about a month before the incident. What transpired during that last one month is not clear from the evidence on record. Not giving the deceased sufficient money to run the household by itself cannot be termed as cruelty, especially as there is no evidence on record regarding the financial condition of respondent No. 1. None of the other prosecution witnesses, who are relatives of the deceased, including her own father, P.W. 2, have supported the case of the prosecution. They have all stated that respondent No. 1 treated the deceased well and they both lived happily together. In fact, both these witnesses have stated that they have neither seen any incident of the deceased being ill-treated by her husband, nor heard about it from any other person. P.W. 2 has been declared hostile but the evidence of P.W. 1 to this effect is on record. The allegations made in the complaint and the Dying Declaration are, therefore, not

corroborated in material particulars. A scrutiny of the entire evidence goes to show that the prosecution has failed to prove the charges against respondent No. 1. The deceased has herself stated in the Dying Declaration that she poured kerosene upon herself in a fit of anger, because her husband was sending her to parental place. The action of the deceased appears to have been taken on the spur of the moment. Further, the evidence on record does not point out to a continuous or unbearable history of harassment of the deceased by respondent No. 1. The element of instigation and goading or provoking the deceased to commit suicide with the clear intention or mens rea that she ends her life, is also lacking in the present case.

28. Considering all the above aspects, it is evident that there are serious infirmities not only in the manner in which the complaint has been recorded but also in the Dying Declaration, inasmuch as there is no certification by a Doctor to the effect that the deceased was conscious and in a fit state of mind before recording it. In addition thereto, the evidence on record, especially of P.W. 1 and P.W. 2, the brother-in-law and father of the deceased, considerably demolishes the case of the prosecution that respondent No. 1 tortured the deceased, and abetted her suicide.

29. The cumulative effect of the above discussion flowing from a scrutiny of the evidence on record is that the charges against respondent No. 1 have not been substantiated, or proved beyond reasonable doubt.

30. Consequently, this Court finds itself in agreement with the conclusion arrived at by the trial Court, acquitting respondent No. 1. The appeal fails and is dismissed.