

(2025) 08 GUJ CK 0926

In the Gujarat High Court

Case No : R/Criminal Appeal No. 454, 514 Of 2011

State Of Gujarat

APPELLANT

Vs

Rameshbhai Savabhai Mali

RESPONDENT

Date of Decision : 20-08-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 313, 377, 378(1), 378(3),
Indian Penal Code, 1860 — Section 302, 304I, 304II, 307, 498A

Citation : (2025) 08 GUJ CK 0926

Hon'ble Judges : Ilesh J. Vora, J; P. M. Raval, J

Bench : Division Bench

Advocate : Aditya Jadeja, Pratik B Barot

Final Decision : Dismissed/ Allowed

Judgement

P. M. Raval, J

1. Criminal Appeal No.454 of 2011 is preferred by the State under the provisions of Section 377 of the Code of Criminal Procedure 1973 for enhancement of sentence imposed upon the respondent for the offence punishable under section 304-I of Indian Penal Code vide judgment and order dated 22.12.2010 passed by learned Presiding Officer, Fast Track Court No.1, Vadodara in Sessions Case No.114 of 2009, whereas Criminal Appeal No.514 of 2011 is also preferred by the State under the provisions of Section 378(1) (3) of the Code of Criminal Procedure 1973 against the order of acquittal so far as the offence under sections 498-A, 302 and 307 of IPC is concerned passed by the learned Presiding Officer, Fast Track Court No.1, Vadodara in Sessions Case No.114 of 2009 on 22.12.2010.

2. Since both these appeals i.e. for enhancement of sentence and acquitting the accused for the offence under sections 498-A, 302 and 307 of IPC are concerned, arising from the same sessions case and hence, both the appeals are heard and decided together by this common order.

3. The facts shorn of unnecessary details as they reveal from the documents are as follows :

3.1 On 19.2.2009 at about 12.00 O'clock when the complainant (deceased) Punjiben Rameshbhai Mali was present at her residence, quarrel took place between her and the present accused (husband) i.e. Rameshbhai Savabhai Mali with regard to consumption of liquor by the accused. During the quarrel, the accused sprinkled kerosene from the stove on the body of the deceased and also gave match box in her hand and in the fit of anger, the deceased complainant ablazed herself by igniting match stick and setting herself on fire. Later on, she was taken to SSG Hospital for treatment, however, she succumbed to the injuries on 24.2.2009. During her treatment, she had given the complaint as well as dying declaration before the Magistrate. On the basis of the said complaint and dying declaration, the FIR came to be registered before the Jawaharnagar Police Station being CR No.I - 14 of 2009 dated 19.2.2009.

3.2 After thorough investigation, chargesheet came to be submitted before the concerned jurisdictional Magistrate, Vadodara and since the case was exclusively sessions triable, learned Magistrate, Vadodara committed the said case to the learned Sessions Court as per the provisions of section 209 of the CrPC and the same came to be registered as Sessions Case No.114 of 2009.

3.3 Vide Exh.7 charges were framed for the offence punishable under sections 302, 307 read with section 498-A of IPC and vide Exh.8, the accused denied the charges and prayed for trial.

3.4 To bring home the charges against the appellant accused, the prosecution relied upon the following oral as well as documentary evidences.

ORAL EVIDENCES :

Sr.No.

Name

Exh.

1

Rahimbhai Bachubhai Kureshi - Panch witness

15

2

Punambhai Bhikhabhai Machhi - Panch witness

17

3

Vishnubhai Bhagandas Kale - Panch witness

19

4

Gitaben Maheshbhai Bariya - Panch witness

20

5

Dipakbhai Ramanbhai Mali - Witness

21

6

Pashiben Natubhai Mali - Witness

22

7

Budhabhai Jinabhai - Witness

23

8

Morchabhai Shankarbhai Nayak - Witness

24

9

Patshottambhai Becharbhai Mali - Witness

25

10

Vinodbhai Becharbhai Mali - witness

26

11

Khailashben Rajubhai Machhi - Witness

27

12

Shardaben Becharbhai Mali - Witness

28

13

Rekhaben Vinubhai Becharbhai - Witness

29

14

Shakuben Parshottambhai Mali - Witness

30

15

Dr.Ashok K.Mahajan - Medical Officer

32

16

Naresh M.Babhor - Deputy Mamlatdar

35

17

ASI - Varshanbhai G.Rathva

39

18

Head Constable - Shankarbhai Saijibhai

44

19

PSI - Raghunathsinh Surmabhai

46

20

Head Constable - Champabhai Motibhai

50

21

Head Constable - Manabhai Daliyabhai Rathva

53

22

P.I. - Zahirmiya A.Thakor - Investigating Officer

54

23

P.I. - Vidhashankar Girjashankar

57

DOCUMENTARY EVIDENCES :

Sr.No.

Name

Exh.

1

Hospital Vardhi

10

2

Inquest Panchnama

11

3

Yadi for P.M.

12

4

Panchnama for physical verification of accused

16

5

Panchnama of scene of offence

18

6

Police Report

33

7

P.M.Note

34

8

Yadi for D.D.

36

9

Yadi written to Medical Officer

37

10

Original complaint

47

11

Yadi for registering the offence

48

12

Hospital vardhi

51

13

Preliminary Report of FSL

55

14

Certificate of medical treatment of accused

56

15

Muddamal dispatch note

58

16

Receipt for receiving muddamal

59

17

FSL Report

60

3.5 Vide Exh.61, the prosecution preferred the purshis declaring that the prosecution does not want to examine witness any further and thus, after recording the said closing purshis, further statement of the accused under the provisions of section 313 of CrPC came to be recorded and after hearing learned advocates for both the sides, vide judgment and order dated 22.10.2010

convicted the respondent - original accused under the provisions of section 304-I of IPC instead of sections 302, 307 read with section 498-A of IPC and handed down five years rigorous imprisonment and to pay fine of Rs.2000/-, in default, to undergo 3 months simple imprisonment. It is against the aforesaid judgment that both these appeals are preferred by the State.

4. Learned APP Mr.Aditya Jadeja appearing for the State would contend that :

(a) That sentence imposed under the provisions of Section 304-I of IPC by the learned trial Judge is unduly lenient and grossly inadequate, more particularly, when the prosecution has proved its case beyond reasonable doubt.

(b) That the learned trial Judge has failed to consider the FIR and also the dying declaration noted by the Magistrate which clearly indicates that the present respondent - original accused has poured kerosene on his wife and had handed over to her the match stick box and thereby committed grave offence under section 307 of IPC.

(c) That the learned trial Judge has miserably failed to appreciate the fact that cruelty was meted out by the accused and acquitting him of the offence under section 498-A of IPC is not tenable either on facts or law.

(d) That no reasons for imposing minimum sentence has been noted down while passing the impugned judgment.

(e) That learned trial Judge has committed grave error, more particularly, on the ground that the Medical Officer was not sure about the mental condition of the deceased at the time of giving dying declaration and thereby convicted the accused for the offence under section 304-I of IPC. However, clear cut evidence of the Medical Officer who has recorded the dying declaration of the deceased clearly establishes involvement of the accused which attracts the provisions of sections 307 and 498-A of IPC. That despite the fact that learned trial Judge has famed the charge under sections 307, 302 and 498-A of IPC, acquitted the accused for such offences, however, convicted him only for the meager sentence of five years under the provisions of section 304-I of IPC which is grossly erroneous and against the medical evidence, oral evidence as well as documentary evidences proved beyond reasonable doubt by the prosecution.

(f) That learned trial Judge ought to have convicted the accused for the offence under sections 307, 302 and 498-A of IPC since the same set of facts were relied upon for convicting the accused under section 304-I of IPC.

(g) Lastly, it is argued that the order acquitting the accused under more serious offences i.e. offence under sections 307, 302 and 498-A of IPC is erroneous and has thus prayed to allow the present appeals either by enhancing the sentence or by convicting the respondent accused under more grievous offences under sections 307, 302 and 498-A of IPC.

5. Learned advocate Mr.Pratik Barot, who has been appointed through the High

Court Legal Service Committee, has argued that no overt act has been attributed to the present respondent original accused which would be evident from the dying declaration as well as the complaint itself. It is submitted that merely pouring of kerosene over the deceased and handing over her match stick without uttering a single word or even abetting to commit suicide is also not coming on record. Hence, the accused is required to be acquitted. It is further submitted that even on the plain reading of the FIR and dying declaration, the deceased herself has set herself ablaze by lighting match stick in fit of anger to which no mens rea can be attributed to the accused and has thus, relying on the judgment in the case of Sumer Singh Vs Surajbhan Singh, reported in 2014 0 AIJEL-SC 55421 has argued that in the appeal preferred by the State for enhancement of sentence, the accused can plead that the accused is entitled for acquittal as there is no material on record to sustain conviction and has thus argued that though the respondent original accused has not preferred any appeal but can certainly plead and pray for acquittal under the provisions of section 377 of CrPC.

6. Heard learned advocates for the respective parties. We have gone through the Record and Proceedings of the case as well as impugned judgment.

7. We have also perused the oral as well as documentary evidences led by the prosecution before the learned trial Court. It transpires that PW - 1 - Rahimbhai Bachubhai Kureshi who is panch of the physical verification of condition of the accused has turned hostile. PW 2 - Punambhai Bhikhabhai Machhi who is panch of place of offence has also turned hostile. Similarly, PW 3 - Vishnubhai Bhajandas Kale - second panch of physical verification of the accused has also turned hostile. PW 4 - Gitaben Maheshbhai Bariya who is neighbour of the deceased has also turned hostile and has not supported the case of the prosecution. PW 5 - Dipakbhai Ramanbhai Mali who is minor witness and step son of the deceased, in his examination-in-chief has stated that the deceased has informed that his father has poured kerosene on her and set her ablaze. However, in the cross examination, the witness has stated that it is true that when the incident took place, he was not present and he has no knowledge as to how the incident has taken place. Thus, it transpires that deposition of this witness does not inspire confidence, does not have any ring of truth and does not take case of the prosecution any further.

8. PW 6 - Pashiben Natubhai Mali who is also neighbour of the deceased has turned hostile and has not supported the case of the prosecution despite being cross examined by the prosecution after having declared hostile. PW 7 - Budhabhai Jinabhai, similarly, has not supported the case of prosecution. PW 8 - Morchabhai Shankarbhai Nayak who is second panch of place of offence has also turned hostile. Parshottambhai Becharbhai Mali - the brother of the deceased has been examined as PW 9 at Exh.25 has also not supported the case of the prosecution. Vinodbhai Becharbhai Mali - brother-in-law of the deceased as has been examined as PW 10 at Exh.26 has also not supported the case of the prosecution. PW 11 - Kailashben Rajubhai Machhi residing in the vicinity of the

deceased's residence has been examined at Exh.27 has also not supported the case of the prosecution. Vide Exh.28 -Shardaben Becharbhai Mali - mother of the deceased in her examination-in-chief has stated that quarrel between her daughter and Ramesh used to take place, however, she has come to know that Ramesh - present accused had burnt her daughter alive and has further stated that in the hospital, her deceased daughter had informed that her son-in-law has set her ablaze. Similar talks were also going on in the nearby circle. However, in the cross examination, this witness has stated that the fact of incident that happened with Punjiben came to her knowledge from the word to mouth from other persons.

9. Vide Exh.29 Rekhaben Vinubhai - sister-in-law of the deceased has also not supported the case of the prosecution. Vide Exh.30 - Shakuben Parshotambhai Mali -sister-in-law has also not supported the case of the prosecution. Vide Exh.32 - PW 15 Dr.Ashok Mahajan who had performed the postmortem of the deceased is examined and has stated in his deposition with regard to the position of the dead body as found during the postmortem and has stated that the deceased expired due to septicemia and its complication following burns and its effects. Vide Exh.35 -PW 16 - Naresh Bhabhor who is Deputy Mamlatdar who has recorded the dying declaration has been examined and it clearly transpires from the said dying declaration that:

"Incident took place at 12.00 O'clock in the afternoon. My husband Ramesh Mali consumes liquor frequently and fights with me. Whenever I say that he should not consume liquor, he quarrelles. He got angry and poured kerosene on me and also handed over me match stick which I lit and set myself ablaze, due to which, I sustained burns. Thereafter, my husband ran away. I ran outside and poured water from tank from neighbour's residence. Village people called 108 and I was taken to SSG. My husband regularly consumes liquor and fights with me. He does not let me live peacefully. Such husband must be punished. That in anger, on my own, I have lit my clothes by match stick".

Considering the aforesaid dying declaration recorded by the Deputy Mamlatdar - Naresh Bhabhor coupled with the fact that in the cross examination, nothing inconsistent destroying the case of the prosecution has come on record which shakes the credibility of this witness and that of the dying declaration vide Exh.38, the said dying declaration is proved by the prosecution beyond reasonable doubt. Even the FIR Exh.47 is also to that effect and is proved by examining the Investigating Officer at Exh.46 namely Raghunathsinh Surmabhai as PW 19, however, nothing adverse to the case of the prosecution has come on record during cross examination.

10. PW 17 - ASI Varsanbhai G.Rathva has been examined at Exh.39. PW 18 - Shankerbhai Saijibhai, Head Constable has been examined at Exh.44. PW 19 - Raghunathsinh Surmabhai, Police Sub Inspector has been examined at Exh.46. PW 20 - Champabhai Motibhai, Head Constable has been examined at Exh.50, whereas PW 21 -Manabhai Rathwa, Head Constable has been examined at

Exh.53. Similarly, Police Inspector - Zahirmiya, Investigating Officer has been examined at Exh.54 and lastly, vide Exh.57, PW 2, Police Inspector has been examined. It clearly transpires that PW 22 - Zahirmiya Thakor has obtained certificate from the concerned Doctor that the patient was conscious and was able to give statement and thereafter, dying declaration came to be recorded by the Executive Magistrate. Nothing inconsistent from the cross examination of these witnesses has come on record.

11. Learned trial Court after analyzing the documentary as well as oral evidences on record has concluded that the prosecution has been able to prove that the accused had committed culpable homicide and thus would fall under section 304-I of IPC since the deceased has taken steps for burning herself out of anger. The question which falls for consideration before this Court is whether the appeal preferred by the State acquitting the accused for the offence under sections 498-A, 307 and 302 and another appeal for enhancement are required to be allowed or not ?

12. The factum of accused having given the First Information Report to the Investigating Officer and having made dying declaration before the Executive Magistrate is proved beyond reasonable doubt. Both these documentary evidences reveal that the deceased herself had put herself ablaze in heat of passion and in anger but the factum of accused meted cruelty on the issue of consumption of liquor by the accused has not been dislodged by the defence. Therefore, the next question which requires to be considered is as to whether the conviction under section 304 Part I of IPC requires enhancement or not ? Though the provisions of section 377 of CrPC as they stood at the relevant point of time while filing the appeal provide that the High Court can enhance sentence after giving the accused reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or reduction of sentence. So far as the appeal filed by the State acquitting the respondent accused under sections 498-A, 307 and 302 of IPC is concerned, when the prosecution has proved its case beyond reasonable doubt that the cruelty was meted out by the accused, that part of the impugned judgment requires interference. However, so far as attracting the provisions of sections 307 and or 302 is concerned, no case is made out since there was quarrel between the husband and wife with regard to consumption of liquor by the accused husband and the accused on the alleged day of incident in anger poured kerosene upon the deceased and only handed over match stick box to the deceased, however, has not spoken a single word nor has attributed any over act. It clearly transpires from the dying declaration as well as the complaint that out of spur of moment and out of heat of passion and anger, she herself lit her clothes and entire incident has taken place. At the best what can be said is that the accused had knowledge that if the match stick is lit, there are all chances that his wife may catch fire and had all the knowledge that it is likely to cause death. However, it is also clear from the FIR as well as dying declaration that the husband had no intention to cause death. Had that been the case so, the

husband would have lit match stick and set her ablaze. However, it is the deceased herself in spur of moment in anger lit herself because of cruelty meted out by the husband on the issue of consumption of liquor. In such circumstances, at the best, commission of offence would fall under section 304-II of IPC and not section 304 Part-I of IPC since the act was done with the knowledge that it is likely to cause death, but was without any intention to cause death and was not premeditated and as such five years rigorous imprisonment and penalty of Rs.2000/- and in default thereof, 3 months simple imprisonment imposed upon the accused is just and proper. However, so far as learned trial Court not sentencing the accused under section 498-A of IPC is concerned, when the case of cruelty meted out is proved beyond reasonable doubt, learned trial Court ought to have handed down punishment on this count. Therefore, the accused is found guilty of having committed the offence under section 498-A of IPC is handed down punishment for the term of three years and to pay fine of Rs.500/-, in default thereof, to undergo 15 days simple imprisonment. Both these sentences are ordered to run concurrently and grant him set off for the period of incarceration undergone in the present case.

13. Under the circumstances, Criminal Appeal No.454 of 2011 fails and the same is dismissed. Criminal Appeal No.514 of 2011 is allowed to the aforesaid extent.

14. It is stated at the bar that the accused has already undergone sentence. In such circumstances, the accused shall pay fine as stated hereinabove if not paid for the offence under section 304-II and shall also pay a fine of Rs.500/- imposed under the provisions of section 498-A of IPC.

15. Copy of this order be sent to the concerned jurisdictional Sessions Court for taking further necessary action in accordance with law. R & P, if any, be sent back forthwith.