

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 1289 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE R.P.DHOLARIA

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI HIRABHAI RATHOD (BHIL)...Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:

MS TANUJA N KACHCHHI, ADVOCATE for the Appellant(s) No. 1

MS HANSA PUNANI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 03/10/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE R.P.DHOLARIA)

1. The present appeal arise out of a judgment of the learned Additional Sessions Judge, Ahmedabad City Civil Court, dated 12.03.2010 in Sessions Case No. 169 of 2009. By the said judgment, the applicant-original accused has been convicted under Sections 302, 498A as well as 506(1) of the IPC. For the offence under Section 302 of IPC, the applicant was ordered to undergo life imprisonment with fine of Rs. 1,000/- and in default simple imprisonment for six months and for the offence under Section 506(1) of the IPC, imprisonment for two years with fine of Rs. 1,000/- and in default rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

2. Briefly stated the prosecution version is that out of the wedlock between the accused and deceased, they had two children, one son aged about 20 years and one daughter aged about 19 years. The accused used to suspect the character of his deceased wife and was treating her with cruelty and was repeatedly threatening her to kill. On 01.01.2009, after returning from labour work, the deceased was cooking on earthen stove. On that day, at about 1.30 p.m., his husband came with a can in his hand and poured petrol upon her. As she was cooking on the stove, her clothes caught fire. In order to save herself, she ran away to her house. At that time, the neighbours came there along with mattresses and doused the fire. She sustained serious injuries due to this

incident. Thereafter, the daughter of deceased also came at the place of the incident and took her to the hospital in autorickshaw. The Police Inspector, Sardarnagar Police Station, Ahmedabad visited her and recorded her complaint. Ultimately, on 02.01.2009 at about 1.45 am, she succumbed to the injuries.

3. Upon the aforesaid complaint, the Police Inspector informed the Executive Magistrate for recording dying declaration and also called the Special Officer from FSL for inspection of the scene of offence. Necessary muddamal articles were recovered from the place of incident. On 02.01.2009, accused came to be arrested. His clothes were seized and sent for chemical analysis. At the conclusion of investigation, chargesheet came to be filed before the concerned Court. The case was committed for sessions trial. The charge was framed at Exh.2. The learned Additional Sessions Judge, Ahmedabad City rendered his judgment of conviction and sentence dated 12.03.2010 in Sessions Case No.169 of 2009 convicting the present appellant – original accused and sentencing him to undergo life imprisonment with fine.

4. In order to prove the aforesaid charge, the learned Additional Sessions Judge examined following witnesses:

Sr. No	Exh	Name	Remarks
1	7	Bharatbhai Somabhai Bheel	Panch of scene of offence
2	9	Dr. Alpesh Zaverchand Shah	Doctor who conducted the Postmortem
3	11	Dr. Ramlakhan Nunmal Baranwal	Doctor who examined the accused

4	15	Dilip Haridas Punwani	Panch of arrest of accused
5	17	Sunderlal Dheerumal Chavla	Panch of recovery of clothes of deceased
6	19	Rameshbhai Ramjibhai Desai	Panch of inquest panchnama
7	21	Sukharam Samartaji Bothed	Panch of physical condition of accused
8	22	Rajubhai Kantibhai Thakor	Panch of recovery of clothes of accused
9	26	Lilaben Poonambhai Patani	Panch of inquest panchnama
10	27	Veronica Ashokbhai Rathod	Daughter of accused and complainant
11	28	Ashokbhai Ishwarlal Patel	Neighbour of accused and complainant
12	29	Kajalben Ashokbhai Patel	Neighbour of accused and complainant
13	31	Vipulbhai Bhikhabhai Parekh	Executive Magistrate who has taken dying declaration
14	34	Chandrasinh Durgasinh Chauhan	Police Constable
15	35	Ramjibhai Vithabhai Desai	PSI who has taken the complaint
16	39	Sulochnaben Punjabhai Chhara	PSO who has registered the offence
17	41	Yakubhai Ratanjibhai Gamit	Investigation Officer
18	52	Abhramji Bhalaji Thakor	PSI who has done the inquest panchnama

The prosecution also tendered following documentary evidence:

Sr. No	Exh	Matter
1	8	Panchnama of scene of offence
2	10	Postmortem report
3	12	Certificate showing injury of accused
4	13	Vardi of Police Constable of Hospital
5	16	Panchnama of physical condition of accused
6	18	Panchnama of the clothes of deceased
7	20	Inquest Panchnama
8	23	Panchnama of recovery of clothes of accused
9	33	Dying declaration before the Executive Magistrate
10	36	Complaint of Niruben
11	37	Report for registration of crime

12	42	Report of the FSL Officer
13	43	Receipt of the FSL
14	44	Covering letter and opinion of FSL
15	45	Report for addition of Section 302 of IPC

5. In order to re-appreciate the evidence on record, we deem it proper to narrate the precise version of various witnesses.

6. Dr. Alpesh Zaverchand Shah, Medical Officer, Civil Hospital, PW 2, who carried out postmortem of the deceased on 02.01.2009 between 10:55 a.m. And 11:50 a.m. was examined at Exh.9. He found second and third degree burns almost all over the body and opined that the cause of death is shock due to severe burns over the body. He further deposed that the sample of skin and hair were taken from the dead body and were sent for to FSL for chemical analysis. The FSL report reveals presence of petroleum hydrocarbon.

In his cross examination, he admitted that there was about 90% burn injuries all over the body. He further admitted that he cannot say whether the deceased was unconscious or not. He further admitted that the deceased was treated by Dr. Shaikh and therefore, he only can throw light about her condition.

7. Dr. Ramalkhan Baranwal, P.W. 13, who examined the accused on 02.01.2009 at about 9.20 p.m. was examined at Exh11. He deposed that the accused narrated the

history that on 01.01.2009 at about 1.30 pm, he sustained burn injuries while rescuing his wife from fire. He also deposed that at that time the accused was in a fit state of mind to give history.

In his cross examination, he denied that the deceased Niruben was unconscious. He also denied that a person become unconscious, if he receive second to third degree burns.

8. Veronica Ashokbhai Rathod, PW 10, daughter of the accused and deceased was examined at Exh.27. She deposed that she is residing at Village-Hansol, Thakorvas, Sardarnagar, Ahmedabad. The deceased Nirubenben was her mother. She used to do household work. Her father previously married one Meenaben and there were three children out of said marriage and at present they are residing in Harekrushna society. On the date of the incident, she was called from her working place. When she came, she saw her mother was burning and her father was trying to save her and due to which he sustained injury over his hand. Thereafter, her mother was taken to hospital and after about an hour, she became unconscious and she died on 02.01.2009.

9. Vipulbhai Bhikhabhai Parekh, P.W. 13, Executive Magistrate was examined at Exh31. He deposed that upon receiving a note for recording dying declaration, he visited Civil Hospital, Burns Ward at about 6:00 p.m, where he inquired about Niruben. Upon finding her, he introduced himself as Executive Magistrate and he

himself verified whether she is in a condition to give dying declaration. Before recording dying declaration, he also obtained opinion of the doctor regarding her physical as well as mental condition. He had also taken necessary precautions and removed all relatives as well as police men from the room. Upon receiving opinion of the doctor that the patient is conscious and in a fit state of mind for giving dying declaration, he recorded the dying declaration, wherein the patient stated that on 01.01.2009 at about 1.45 pm while she was preparing roti on the earthen stove, at that time, her husband came with can and poured petrol upon her. Due to this, her clothes caught fire and she got burn injuries. After recording her dying declaration, he obtained thumb mark of the deceased Niruben. He has produced the said dying declaration at Exh 33.

In his cross examination, he admitted that during his service period, he has recorded nearly 60 to 70 dying declaration of such types. He further admitted that the patient was in a fit state of mind to give dying declaration.

10. Ramjibhai Bhikhabhai Desai, PW 15 was examined at Exh 35. He deposed that, on 01.01.2009, while he was on duty as Police Sub Inspector at Sardarnagar Police Station, he received vardi from Civil Hospital. When he reached Civil Hospital, he saw Niruben was admitted in G1 ward. He recorded her complaint, as stated by her and thereafter, he obtained left hand thumb mark on the said complaint, produced vide Exh 36.

In his cross examination, he admitted that he received vardi at about 4.15 p.m. and visited Civil Hospital after 4.15 p.m. He further admitted that he recorded the complaint at 8.15 p.m and it was sent for registration at 9.00 p.m. He denied that the deceased was not in a fit condition to give the complaint.

11. Yakubhai Ratanji Gamit, PW 17 was examined at Exh 41. He deposed that on 01.01.2009, he was on duty as Second Police Inspector at Sardarnagar Police Station. At that time, he received a complaint of Niruben for investigation. The panchnama of scene of incident was carried out in his presence. He also recorded the statement of neighbours as well as relative of the deceased. The accused was arrested by him on 02.01.2009. He identified the muddamal articles recovered during the course of investigation as well as the accused before the Court.

12. After the evidence was over, the learned Additional Sessions Judge recorded further statement of accused under Section 313 of the Code of Criminal Procedure wherein the learned Additional Sessions Judge sought explanation from the accused, so far as incriminating evidence which came to the fore during the course of trial. The accused rendered his explanation that the evidence is false and further stated that he has been wrongly implicated in the case and he wants to examine witness for his defence.

13. The accused examined Natwarlal Rana as defense

witness vide Exh 55. He deposed that the deceased Niruben was his younger sister. She married the accused about 23 years ago. He further deposed that he used to visit her house and she was living happily with her husband. She never made any complaint to him. On the day of incident, he had visited the place of his sister and at that time, she was unconscious. He accompanied her to the Civil Hospital and he stayed there for about one to two hours at the Hospital. At that time, she was unconscious. When the police recorded her complaint, he was not present. He came again when she died. He also attended her funeral ceremony.

In his cross examination, he admitted that he reached at the Civil Hospital at 1.30 p.m and left at about 1.45 p.m. He did not know what happened to the accused. He admitted that till he was in the hospital, police did not come. He further admitted that on the day of the incident itself she died. She died at about 4.30 p.m and on the same day and at about 6 pm funeral ceremony was carried out. He denied that she died on the following day at about 1.00 am. Police never interrogated him. He admitted that her sister received burn injuries nearby the house of Vanzara. He denied that she died on the next day and funeral ceremony was thereafter carried out on the very next day.

14. Almost all the witnesses examined by the prosecution turned hostile. Consequently, only three dying declarations as well as corroborative evidence is available on the record. The dying declaration, at Exh 36

came to be recorded by Police Sub Inspector, Sardarnagar Police Station, wherein the deceased stated that on 01.01.2009, in noon time after finishing her labour work she returned home. As the earthen stove belonging to one Govindbhai was idle, she was preparing roti over the stove. At that time at about 1.30 p.m, her husband came alongwith petrol can and poured over her. Due to which, fire caught all over her body. She ran towards her house. At that time, the neighbours came with mattresses to douse the fire. Thereafter her daughter came and she took her to the Civil Hospital. She has further stated that she was conscious and she is under treatment. She further stated that her husband was suspecting her character and illtreating her and was also threatening her to kill.

15. Another dying declaration was recorded by the Executive Magistrate at about 18.10 pm on 01.01.2009 and it was completed at about 18.40 hours. The dying declaration is in question & answer form. Initially, the Executive Magistrate introduced himself. He ascertained her mental as well as physical condition before taking down her dying declaration. Introductory questions were asked and answers were taken down. After asking about 1 to 10 preliminary questions, following questions were asked and their answers were taken down, as under:

No.	Question	Answer
10	Time of incident	The incident occurred on 01.01.2009 at about 1.30 p.m.

11	Who were present at the time of incident?	She was alone. Thereafter, her husband came in drunken condition and her son and daughter were outside the house.
12	Whether anybody gave you mental or physical ill-treatment?	My husband used to ill-treat me.
13	Whether have you tried to commit suicide?	No. My husband has burnt me.
14	Whether anybody burnt you?	While I was cooking roti at that time my husband poured kerosene over me and burnt me.
15	How the incident happened?	My husband quarreled with me while I was cooking roti at that time and poured kerosene over my body which caught fire.
16	What type of clothes were worn by you at the time of incident?	I wore silk sari
17	Do you know Gujarati	Yes, I know Gujarati
18	Details of incident	Today on 01.01.2009 at about 1.30 p.m I was cooking roti on the earthen stove at that time my husband came alongwith petrol cane. I thought he might have brought water to douse stove but he poured kerosene all over my body which caught fire and which burnt me. My daughter was on service and my son was outside the house.
19	Do you want to say anything more?	No

Under the aforesaid dying declaration, thumb impression of the deceased was taken and it was identified by the Executive Magistrate. He took precaution that neither relative nor any police officials are present in the room. He also ascertained her mental and physical condition

from the doctor before recording dying declaration. The dying declaration was recorded, as stated by the victim.

16. Third dying declaration produced at Exh 14 was recorded by Dr. R.L.Banwal, the Medical officer. After admission and while examining her, the doctor has taken history regarding the incident and which was described as under:

“Description of injured:

History given by the patient herself:-. On 01.01.2009 at about 1.30 p.m I was cooking roti on the earthen stove at my home. At that time my husband came in drunken condition and poured petrol and burnt me.

O/E: Patient conscious and fit for giving history

Burn sites : scalp hair partly burnt, Face, neck both upper limbs, chest, abdomen, both lower limbs, except lt. Thigh (inner surface)

Diagnosis:- 85% 2-3 homicidal thermal+ Respiratory burnt”

17. On the basis of such evidence available on the record, learned advocate Ms. Tanuja Kachchhi has argued that the dying declarations recorded by the various persons are not reliable and the theory of suicidal death is most appropriate in the present case.

18. Against the aforesaid argument, learned Additional Public Prosecutor Ms. Punani has argued that all the three dying declarations recorded by various functionaries are consistent, reliable and truthful and therefore, learned Trial Court has rightly based conviction relying upon the aforesaid dying declarations and this Court should not

interfere with the findings recorded by the learned Trial Court.

19. In our scrutiny of evidence on record the entire case of the prosecution rest on the aforesaid three dying declarations which came to be recorded by the Medical Officer, Executive Magistrate and the Police Official, who recorded the first information report of the deceased Niruben, respectively.

20. In order to assess the admissibility of evidentiary value of such dying declarations, it be appropriate to refer to the provisions of Section 32 of IPC

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) when it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2)

..... ..

(8)”

21. Bare perusal of the aforesaid provision of law makes it clear that dying declarations is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that the statement of deceased relates to the cause of her death. In that event, it qualifies the criteria mentioned under Section 32(1) of the Evidence Act. We have noticed that in number of cases, the Hon'ble Supreme Court observed that as there is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of declarant certified from a doctor. In the appropriate cases, the satisfaction of a person recording the statement regarding the state of mind of the deceased would also be a sufficient to that the deceased was in a fit position to make statement. It is also well settled law that, if prosecution solely depends on the dying declaration, the normal rule is that the Court must exercise due care and caution to ensure genuineness of the dying declaration keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination.

22. In *Shudhakar vs. State of Madhy Pradesh*, AIR 2012 SC 3265, the Honourable Supreme Court observed as under:

16. We may, now, refer to some of the judgments of this Court in regard to the admissibility and evidentiary value of a dying declaration. In the case of Bhajju @ Karan v. State of M.P. [(2012) 4 SCC 327], this Court clearly stated that Section 32 of the Evidence Act was an exception to the general rule

against admissibility of hearsay evidence. Clause (1) of Section 32 makes statement of the deceased admissible, which has been generally described as dying declaration. The court, in no uncertain terms, held that it cannot be laid down as an absolute rule of law that dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence. The dying declaration, if found reliable, could form the basis of conviction. This principle has also earlier been stated by this Court in the case of Surinder Kumar v. State of Haryana (2011) 10 SCC 173 wherein the Court, while stating the above principle, on facts and because of the fact that the dying declaration in the said case was found to be shrouded by suspicious circumstances and no witness in support thereof had been examined, acquitted the accused. However, the Court observed that when a dying declaration is true and voluntary, there is no impediment in basing the conviction on such a declaration, without corroboration.

17. *In the case of Chirra Shivraj v. State of Andhra Pradesh [(2010) 14 SCC 444], the Court expressed a caution that a mechanical approach in relying upon the dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by other persons and where these ingredients are satisfied, the Court expressed the view that it cannot be said that on the sole basis of a dying declaration, the order of conviction could not be passed.*

18. *In the case of Laxman (supra), the Court while dealing with the argument that the dying declaration must be recorded by a Magistrate and the certificate of fitness was an essential feature, made the following observations. The court answered both these questions as follows:*

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every

motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement

necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

20. *The 'dying declaration' is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."*

23. In light of the aforesaid broad principle laid down by the Supreme Court if we analyze the aforesaid three dying declarations came to be made by the deceased, following fact emerges as under:

(i) Indisputably, the deceased and the accused are husband and wife and were residing together. Indisputably the incident occurred on 01.01.2009 at about 1.30 p.m and soon after she was taken to Civil hospital, Ahemdabad and she was admitted in G1 ward at

about 2 pm after completing necessary formalities of admission. The doctor, who examined first asked about the injury caused to her and she stated the injury was caused by the accused by pouring can of petrol over her. That certificate came on record at the instance of accused.

(ii) In the cross examination of Dr. R.L.Banwal, PW 3, we have noticed that the said doctor examined accused Ashok. The learned advocate for accused asked about the treatment given to the victim Niruben. As the witness had not brought any record pertaining to her treatment, the matter was adjourned and on the next day the doctor came with the medical case paper and the aforesaid dying declaration at Exh 14 came to be produced at the instance of the accused himself.

(iii) Even in the cross examination of aforesaid doctor, it is also established that the history was taken down by him at that time she was conscious and she was in a position to give such dying declaration. We also find the same narration in the aforesaid medical certificate in the nature of dying declaration came to be admitted at Exh 14. So far as the first dying declaration came to be recorded by the aforesaid medical officer there appears no dispute and even the accused has also admitted in the cross examination and got proved in his cross examination itself. Which bears proper certification on the part of the medical officer who recorded the aforesaid dying declaration. The aforesaid dying declaration was came to be recorded at 2.41 p.m. on 01.01.2009.

24. Second dying declaration which came to be recorded by Mr. V.B.Parekh, Executive Magistrate, P.W. 13, who was called with a yadi from the police station containing a certification regarding her physical as well as mental condition. Upon reaching at the civil hospital, the Executive Magistrate also ascertained her physical as well as mental condition and thereafter recorded the aforesaid dying declaration in question answer form. He has also obtained the mental fitness condition of the victim from the doctor, who was present at the relevant time. In the aforesaid dying declaration the endorsement of her consciousness and fitness recorded by the doctor is also available on the record. The said dying declaration was recorded in between 18.10 p.m to 18.40 p.m on 01.01.2009.

25. Regarding third dying declaration, it is in the nature of FIR which came to be produced at Exh 36. It was recorded by P.W. 15, Mr. R.V.Desai, Police Sub Inspector, Sardarnagar Police Station. The witness was put to the cross examination. In the cross examination itself it is established that the aforesaid FIR was recorded at 8.15 p.m on 01.01.2009 and it was transmitted to the concerned police station within an hour for due registration.

26. As noticed above, we find in the aforesaid three multiple dying declarations that the defence has also examined one defense witness who happens to be the real brother of deceased Niruben. As narrated above, in

his deposition, it is established that soon after the occurrence of the incident he reached the place of the incident and he accompanied Niruben to Civil Hospital and stayed up to 1.45 p.m on 01.01.2009. Regarding her death, the witness has stated that she was died on the same day after noon and her funeral ceremony was carried out on the same day at 6 pm on 01.01.2009. Evidence on record clearly establishes that she died about 1.45 am on 02.01.2009 and thereafter, at 3 O'clock on the same night i.e. on 02.01.2009 inquest over her dead body was carried out. In view of evidence on the record, that the witness is not reliable so far as her death occurred on 01.01.2009. So precisely nothing comes out from the defense witness so far as the defense theory of suicidal death of deceased Niruben is concerned.

27. Even otherwise, the evidence on record clearly establishes that the aforesaid theory of suicide is an afterthought. During the course of trial, no such theory was there in the mind of defense. The accused got an opportunity of explaining. If such theory was there even while he was arrested and he was taken for his own physical examination before the Dr. Banwal who examined him. While he was examined two injuries were found. Dr. Banwal sought explanation for such injury. Regarding burn injuries he explained that he sustained such injury while saving his wife. Regarding another injury of abrasion over left elbow, he explained the injury sustained due to fall down. At that time, the accused has never stated that the deceased committed suicide. Similarly, while recording the evidence of various

witnesses no suggestion was put forward to any of the witness that the deceased herself has poured kerosene and committed suicide. Not only that after conclusion of prosecution, the accused was also given an opportunity to explain those circumstances which emerges against him wherein also in his explanation he has not stated that she sustained injury while committing suicide. Instead of putting such theory during the course of recording further statement under Section 313 of Code of Criminal Procedure, the accused claimed to examine witness in support of him. On such request, the defense witness was also examined, as narrated above. In his deposition also no such theory of suicidal act on the part of the deceased is forthcoming. So in view of the aforesaid reasons the theory of suicide put up by the defense is not acceptable.

28. The evidence on record clearly indicates that the aforesaid all the three dying declarations are consistent to each other and they are pointing out the only one theory regarding the cane of petrol was poured over the deceased Niruben, due to which she sustained burn injury and resultantly, she died. We also find that the all the aforesaid dying declarations were recorded after ascertaining her mental and physical condition. In our scrutiny all the three dying declarations are authentic, truthful and reliable.

29. So in view of the aforesaid guide line laid down by the Supreme Court even without any corroboration the conviction can be based upon such consistent dying

declarations. However, in our scrutiny of evidence, the aforesaid dying declarations also get corroboration on various aspects. The panchnama of scene of incident, carried out soon after the incident took place, also reveals that the incident occurred in front of the house of Vanzara. The place of the incident was shown by the daughter of deceased Niruben in her deposition. From the place of incident various incriminating articles such as steel cane, half bunt clothes, half burnt pieces of silk sari, other pieces of border of sari, the skin pieces of deceased etc sent for chemical analysis and presence of petroleum hydro carbon was found in the chemical analysis. The same report is exhibited at Exh 43. The accused also sustained injury in the incident and he was also taken to the hospital and he has also narrated before the Medical Officer that while saving her, he received injury. Thus, the presence of accused is established at the time and place of incidence.

30. So far in view of the aforesaid evidence and our analysis of evidence on record clearly reveals that the deceased was in a fit state of mind to make such dying declarations and her statement in those dying declarations are consistent and truthful. In addition to the same, the aforesaid prosecution witnesses P.W 3, Dr. Banwal, P.W 13, Mr. V. B. Parekh-Executive Magistrate, PW 15 Mr.Ramjibhai Desai, PSI and other witnesses in support of their claims. In that view of the matter, we have no hesitation to record that the aforesaid dying declarations have been rightly accepted and the learned Trial Court has rightly recorded the conviction based

upon such dying declarations.

31. As regards assertion of the accused while recording further statement under section 313 of the Criminal Procedure Code that he is falsely implicated, we have noticed that, the daughter, brother and neighbours of deceased Niruben became hostile to their police statements before the Court. Therefore, none remains to rope the accused with the crime.

The doctor who treated her, the Executive Magistrate and the Police Officer who recorded dying declaration are independent functionaries in their respective field having no connection with the deceased as well as with the accused. Therefore, we see no even remotest chance to implicate the accused with the crime.

32. It has come on record that the deceased Nirubensurvived for about 12 hours between 1:45 p.m. On 1/1/2009 and 1:45 a.m on 2/1/2009. It has also come on record that the dying declarations of the deceased came to be recorded during such time in the Civil Hospital. Therefore, we see no possibility of anybody tutoring the deceased.

33. In view of the aforesaid evidence brought on record, it is evidently clear that (i) The deceased was in a fit state of mind to make dying declarations and her statement in those dying declarations are consistent and truthful. We see no infirmity in the aforesaid dying declarations. We have no hesitation to hold that the

aforesaid dying declarations are authentic, truthful and reliable. (ii) We see no remote chance of the deceased being tutored, influenced, prompted. (iii) There is no evidence to concur with the contention of the learned advocate for the appellant that the deceased may have committed suicide and even in her dying declaration she has denied that contention. No such contention was put forward by the defence before the Trial Court. Therefore, we see no reason to lend concurrence to the submission of theory of suicide; and (iv) since the daughter, brother and neighbour of deceased Niruben turned hostile to their police statements, none remains to rope the accused with the crime, therefore, we see no even remotest chance to implicate the accused with the crime. In view of the above, we do not find any merit in the appeal, neither there is any reason to interfere with the aforesaid judgment rendered by the learned Additional Sessions Judge, Ahmedabad City.

34. For the reasons recorded above, the appeal is devoid of any merits and deserves dismissal, and therefore, the appeal is dismissed.

R & P to be transmitted to the Trial Court.

(AKIL KURESHI, J.)

(R.P.DHOLARIA,J.)

JYOTI