IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 575 of 2008
With
R/CRIMINAL REVISION APPLICATION NO. 450 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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STATE OF GUJARAT

Versus

LAXMANBHAI @ LAKHABHAI PRATAPBHAI THAKOR & 2 other(s)

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Appearance:
MS JIRGA JHAVERI, APP for the Appellant(s) No. 1
RICHA SHAH(7541) for the Opponent(s)/Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 19/07/2022

ORAL JUDGMENT

Introduction:

1. Much ink has been flown on evaluation and appreciation of evidence on a written dying declaration, but, a very few occasions have arisen, wherein the Court has an opportunity to examine and assess the evidence adduced by the prosecution on

oral dying declaration. Present is one such case.

1.1 The principle of **"*Leterm Mortem*"** which means, "words said before death", in a legal term it is called as 'Dying Declaration'. The word "Dying Declaration" means a statement, written or verbal, of relevant facts made by a person, who is dead. It is the declaration of a person who had died explaining the circumstances of his death. This is based on the maxim '***Nemo Mariturus Presumuntur Mentri*"** *i.e.* a man will not meet his maker with lie on his mouth. Our Indian law recognizes the fact that '***a dying man seldom lies***' *or* '***truth sits upon the lips of a dying man***.' It is an exception to the principle of excluding hearsay evidence rule. Here the person (victim) is the only eye-witness to the crime, and exclusion of his/her statement would tend to defeat the ends of justice. The respective section does not lay down any standards or measures which need to be followed or considered by the judicial authority while delivering the judgment. This gives wider discretion to the judges, who again, based on the facts, circumstances and personal opinion exposing it to the rule of subjectivity. A dying declaration is considered to be credible and trustworthy based upon the general belief that most people who know that they are about to die, do not lie.

1.2 **Like churning out the nectar, the role of judiciary is alike, *viz.* churning out the truth**. Keeping all such aspects in mind, let us discuss and evaluate the merits of the case on hand.

Prelude:

2. The present appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (herein after referred to as "the Code") is filed by the appellant – State of Gujarat and Criminal Revision Application No. 450 of 2007 is filed by the applicant - original complainant under Section 401 of the Code, challenging the judgment and order dated 10.07.2007, passed in Sessions Case No. 29 of 2004, by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 1, Dhrangadhra, recording the acquittal of the respondents - original accused.

Factual matrix:

3. Marriage of deceased Ramilaben, the sister of original complainant – Dhanabhai Chaturbhai was solemnized with accused No.1 – Laxmanji @ Lakhabhai Pratapbhai Thakor, resident of Vadgam of Dasada Taluka, prior to about three years of the incident in question. Out of the wedlock, they have one child named Rahul, aged one and a half years at the relevant time. That after the marriage, victim deceased Ramilaben was residing in her matrimonial house in a joint family at Dasada. That, on 19.08.2004 at about 5:30 p.m., the complainant got the

telephonic message from accused No. 2 – Pratap Valabhai Thakor, the father-in-law of the deceased, that his younger sister was burnt and asked him to come immediately and they were taking her to the hospital and, accordingly, the complainant left for Vadgam and when he reached at Shankheshwar, he saw father-in-law and the uncle-in-law going in a white colour car, and hence, the complainant stopped the said car and found his sister lying in the middle seat in a burnt condition and on inquiry made by the complainant, her sister informed him that her husband, mother-in-law and the father-in-law demanded and asked her to bring Rs.10,000/- and pressurized her to bring money from her parental home, and thereby caused physical and mental harassment to her. They harassed her by pointing out mistakes in household works. That, earlier she had brought Rs.5,000/- and hence, on being instigated by her in-laws, her husband got infuriated and beat her up, and hence, in frustration, she went to her home and sat her ablaze by pouring kerosene on account of persistent harassment and torture by the respondents - accused persons. Thus, the Respondents committed offence in question for which, FIR came to be registered against them for the offences punishable under Sections 306, 498-A and 114 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) and Sections 3 and 7 of the Dowry Prohibition Act.

3.1 On the basis of the complaint, investigation came into motion and, after investigation, as there was sufficient evidence against the respondents - original accused persons, Charge sheet was filed against them before the learned Judicial Magistrate First Class, Patdi. Since the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions under the provisions of Section 209 of the Code, where, it was registered as Special Case No. 29 of 2004. The learned Sessions Court framed the charge against the accused for the offences punishable under Sections 306, 498A and Section 114 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act. The accused pleaded not guilty to the charge and hence, the trial commenced. In support, the prosecution has testified 11 witnesses and produced 10 documentary evidence. On conclusion of trial, the learned Sessions Judge acquitted the accused persons from the charges levelled against them. Grieved by the said order of acquittal, present appeal at the behest of the State and the revision application at the behest of the original complainant have been filed.

Submissions:

4. Heard, Ms. Jirga Jhaveri, learned Additional Public Prosecutor for the appellant – State, learned advocate Mr. H. N. Brahmbhatt appearing on behalf of the applicant - original

complainant and learned advocate Ms. Richa Shah appearing on behalf of the respondents - original accused.

4.1 Learned APP Mr. Jirga Jhaveri has contended that the learned Sessions Judge has committed error in appreciation of evidence of PW-4 Dhanabhai Chaturbhai, Exh. 41, who is the original complainant and brother of the deceased victim, who has fully supported the case of the prosecution as narrated by him in his complaint, Exh. 42. In his evidence, he has stated that on 19.08.2004 at about 5:30 p.m., when he was present at his home, at that time, he received a telephonic call from the father-in-law of the deceased that his younger sister Ramilaben was burnt and he was asked to come immediately, and thereafter , when he was going towards Vadgam village, he saw the father-in-law of the deceased and his family in a white coloured motor car, and therefore, he stopped them and found that his younger sister was lying in burnt condition in the motor car. When he asked her about the same, deceased informed him that her husband, father-in-law and the mother-in-law demanded Rs.10,000/- and asked her to bring from her parental home and when denied, they caused physical and mental harassment to her, and because of that, out of frustration, by pouring kerosene on her body, she sat herself ablaze. It is contended that only because the witness examined by the prosecution is the brother of the deceased, the

learned Judge ought not to have disbelieved and discarded the evidence of this witness.

4.2 The prosecution has testified PW-6 Sadhu Dineshbhai Khemdas at Exh. 46, who has fully supported the case of the prosecution and is an independent witness and accordingly, in the submission of learned Additional Public Prosecutor, the learned Sessions Judge has committed an error in arriving at the acquittal of the accused persons. It is further contended that the learned Sessions Judge has failed to appreciate the fact that the incident had taken place at the matrimonial home of the deceased *i.e.* at the place of the accused and there are clear findings by the learned Sessions Judge that it is not an accidental death but it is a suicidal death, and therefore, in such facts and circumstances of the case, the learned Sessions Judge ought to have examined as to how and why the death of the deceased took place and as to what has prompted her to commit the suicide. She submitted that no explanation is coming forth from the defence about the same. She submitted that accordingly, when it is not the case of accidental death and it is suicidal one and when there is specific evidence of the witnesses stating that the accused persons caused harassment to the deceased, the learned Sessions Judge ought to have presumed that it is case of suicidal death of a married woman as provided under Section

113A of the Indian Evidence Act (Evidence Act). Further, in the instant case, there is no dispute that incident took place at the place of accused persons. In such facts and circumstances, the present case falls under Section 113A of the Evidence Act and the husband and relatives of her husband subjected her to cruelty.

4.3 The learned Additional Public Prosecutor then submitted that the learned Sessions Judge ought to have presumed on considering all the material evidence and circumstances of the case that such a suicide has been abetted by the husband of the deceased and other accused persons. Therefore, the impugned judgment and order passed by the learned Sessions Judge, being even otherwise, perverse, illegal, invalid and improper, deserves to be quashed and set aside.

4.4 The learned Additional Public Prosecutor further contended that as per the settled law, minor omissions and contradictions in the prosecution evidence may not be fatal to the prosecution case. Upon all such grounds, she has prayed to quash and set aside the order of acquittal, impugned herein, passed by the learned Sessions Judge as the same is improper, perverse and bad in law.

4.5 Learned APP has also taken this Court through the

depositions of PW-1 Nodhanji Keshaji at Exh. 31, PW-2 Jagabhai Pathanbhai Chavda at Exh. 33, PW-3 Amubhai Bhavsangbhai at Exh. 35, PW-4 Dhanabhai Chaturbhai at Exh. 41, PW-5 Muliben Chaturbhai at Exh. 45, PW-6 Sadhu Dineshbhai Khemdas at Exh. 46, PW-7 Kanujibhai Chaturbhai at Exh. 47, PW-8 Dr. Jayeshbhai Ranchodbhai Rathod at Exh. 49, PW-9 Vanrajsinh Juvansinh Gohel at Exh. 53, PW-10 Ghanshyamsinh Mansinh Zala at Exh. 54 and testimony of PW-11 Manjibhai Muljibhai Garva at Exh. 56. She has also placed reliance on the documentary evidence produced on record, which are as many as 10 in number.

4.6 Further, taking this Court to the impugned judgment and order passed by the learned Sessions Judge, the learned Additional Public Prosecutor contended that the defence has not much challenged the dying declaration which is sufficient enough to bring home the charge against the accused. She also pointed out that there are mainly two main witnesses, one is PW-7 Kanujibhai Chaturbhai, the brother of the deceased, who is examined at Exh. 47 and another is PW-6 Sadhu Dineshbhai, who is examined at Exh. 46 who is an independent witness who had heard the victim narrating that she was subjected to cruelty, and was given physical and mental torture and harassment making demand of Rs.10,000/- and also, on the day of occurrence, she was beaten by her husband, and therefore, the deceased ended

her life by pouring kerosene on herself and sat herself ablaze. The learned Additional Public Prosecutor extensively took this Court through the evidence of all the prosecution witnesses. She has also countered the decisions relied upon by learned advocate appearing on behalf of the respondents - original accused and submitted that the same are not applicable to the facts of the present case since all such authorities are pertaining to the written dying declaration and the facts and circumstances are totally different.

4.7 Learned APP Ms. Jirga Jhaveri has also argued that the learned Sessions Judge has committed a grave error in not appreciating the oral dying declaration, and therefore, when the marriage span is of three years only, in that case, as per the settled law, there is statutory provision under Section 113A of the Evidence Act with regard to presumption as to abetment. Section 113A reads thus:

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

4.8 Therefore, in the submission of learned Additional Public Prosecutor, when the death is unnatural / suicidal death and the victim, who was on deathbed, makes serious allegations of cruelty upon the accused persons, the learned Sessions Judge ought to have convicted all the three accused persons.

4.9 Thus, making above submissions, the learned Additional Public Prosecutor, with all vehemence at her command, urged to allow this appeal by setting aside the impugned judgment and order passed by the learned Sessions Judge and to convict the respondents – accused for the crime in question.

5. *Per contra*, learned advocate Ms. Richa Shah for the respondents – accused, while supporting the impugned judgment and order of the trial Court, submitted that the learned Sessions Judge has, after due and proper appreciation and evaluation of the evidence on record, has come to such a conclusion and has acquitted the accused, which is just and proper. She submitted that it is trite law that if two views are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by

some manifest illegality.

5.1 The learned advocate for the respondents – accused submitted that the ingredients of the offence alleged against the accused are not proved by the prosecution beyond reasonable doubt and there were several contradictions and omissions in the evidence on record and therefore, the learned Sessions Judge has rightly acquitted the accused of the charges levelled against them.

5.2 The learned advocate for the respondents - original accused has heavily contended that in the present case as such, both the panchas have not supported the case of the prosecution. Further, it is an accidental death, since the kerosene was found at the place of incident and smell of kerosene was also found on the body of the deceased. Therefore, the deceased died due to blast of stove, and therefore, it is not a suicidal death. She further argued that if for the sake of argument it is believed that the case is not an accidental death but suicidal one, in that case also, the prosecution has not been able to prove the case beyond reasonable doubt as the ingredients of the offence alleged i.e. Sections 107 and 306 r/w. 114 IPC and Sections 3 and 7 of the Dowry Prohibition Act, and therefore also, the learned Sessions Judge has rightly come to such a conclusion, which requires no

interference at the hands of this Court as there is no illegality, perversity and or any error of law. Eventually, she urged that this appeal as well as the revision application may be dismissed.

5.3 In support, the learned advocate for the respondents – accused has relied upon following decisions:

i) State of Uttar Pradesh v. Santosh Kumar and Others, (2009) 9 SCC 626;

ii) State of Rajasthan v. Yusuf, (2009) 12 SCC 139;

iii) Keesari Madhav Reddy v. State of Andhra Pradesh, (2011) 2 SCC 790;

iv) Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436;

v) Suryakant Dadasaheb Bitale v. Dilip Bajrang Kale and Another, (2014) 13 SCC 496.

5.4 Relying upon the decision in ***Suryakant Dadasaheb Bitale (supra),*** learned advocate Ms. Shah for the respondents – accused submitted that so far as revisional jurisdiction is concerned, the scope is very scant. It is only where the material evidence is overlooked by the trial Court or the Sessions Court, the High Court in revisional jurisdiction can interfere with finding of acquittal. Further, the High Court is precluded from reappraising the evidence. Further, on facts, it was held that, the Sessions Court had not ruled out any admissible evidence and had considered both dying declarations in proper perspective.

Besides, the view taken by the Sessions Judge was neither unreasonable nor perverse but was possible reasonable view based on evidence on record. Thus, High Court in such circumstances, was not justified in interfering with order of acquittal in revision. The High Court should confine itself only to admissibility of the evidence and should not go further and appraise the evidence.

6. Learned Advocate Mr. H. N. Brahmbhatt appearing for the revisionist – original complainant has joined with the arguments advanced by the learned Additional Public Prosecutor and prayed for to allow the revision application inasmuch as the impugned judgment and order passed by the learned Judge is erroneous and against the facts and evidence on record. In support, he has relied upon a decision of this Court rendered in Criminal Appeal No. 352 of 2008 on 28.10.2021.

REASONING:

7. Heard the learned advocates for the respective parties and gone through the impugned judgment and order of the trial Court as well as the material on record.

7.1 Before adverting to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well

settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

7.2 Centering the aforesaid settled legal position, if the facts of the present case are seen, the respondents – original accused – husband and the parents in-laws of the deceased were charged with the offences punishable under Sections 306, 498-A and 114 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act, trial of which, was culminated into acquittal, which led the appellant – State and the original complainant to knock the doors of this Court by way of this appeal as well as the revision application respectively.

7.3 As the facts go, prior to about three years, the respondent No. 1 (husband) and the deceased (wife) had tied the nuptial

knot. Out of the said wedlock, they had a boy child. Initially, they resided in joint family, however, for last one and a half years prior to the incident, they started residing separate. It is further the case of the prosecution that allegedly, the respondents started physical and mental torture upon the deceased for dowry. That on 19.08.2004, the complainant had received call from the father-in-law of the deceased that his sister had sustained burn injuries and hence, the complainant rushed and *en route*, found father-in-law of the deceased and others taking his sister to the hospital and on intervention he saw his sister lying wrapped up with a bed-sheet (chadar) and on taking off the bed-sheet and asking her about the cause, she informed that the respondents asked her to bring Rs.10,000/- from the complainant and when she denied saying earlier also, she had brought Rs.5,000/-, they beat her up and hence, she went to the place were she along with the respondent No. 1 used to reside and as she could not bear such a torture and harassment committed suicide by setting her ablaze by pouring kerosene and consequently, the FIR in question came to be registered against the respondents, for which, in trial, the respondent came to be acquitted of the charges levelled against them. Grieved by the said decision of acquittal, present appeal as well as the revision before this Court.

7.4 To prove the case, the prosecution has produced following

oral as well as the documentary evidence:

Oral Evidence

Sr.	PW	Name	Exhibit
1	PW-1	Nodhanji Keshaji	31
2	PW-2	Jagabhai Pathabhai Chavda	33
3	PW-3	Amubhai Bhavsangbhai	35
4	PW-4	Dhanabhai Chaturbhai	41
5	PW-5	Muliben Chaturbhai	45
6	PW-6	Sadhu Dineshbhai Khemdas	46
7	PW-7	Kanujibhai Chaturbhai	47
8	PW-8	Dr. Jayeshbhai Ranchodbhai Rathod	49
9	PW-9	Vanrajsinh Juvansinh Gohel	53
10	PW-10	Ghanshyamsinh Mansinh Zala	54
11	PW-11	Manjibhai Muljibhai Garva	56

Documentary Evidence

Sr.	Particulars	Exhibit
1	Panchnama of the place of incident	32
2	Panchnama of the place of incident for seizing the muddamal	34
3	Copy of Inquest Panchnama	36
4	Panchnama of Accused Nos. 1 and 2	37
5	Panchnama of Accused No.3	38
6	FIR	42
7	Police Yadi	50
8	PM Yadi	51
9	Copy of Inquest Panchnama	52
10	Entry regarding accidental death	57

7.5 Now, if the deposition of PW-1 Nodhanji Kesaji, Exh.31, is referred to, he appears to be the panch witness of the

panchnama of place of occurrence, which is also on record at Exh.32. He narrated the different items which were lying at the place of occurrence wherein primus was lying without kerosene, steel *kathrot*, two fried *roti*, one *damicha* (*godra*) and also narrated about the surrounding area of the residence of the accused persons. He was not cross-examined by the defence witness, and therefore, the same is required to be considered while appreciating the evidence.

7.6 The prosecution has then testified PW-2 Jagabhai Pathabhai Chavda at Exh. 33, who has turned hostile, therefore his evidence may not be read in detail.

7.7 Next is PW-3 Amubhai Bhavsangbhai, Exh. 35 in whose presence, primus was seized. He has also identified the sari, bra and the pieces of blouse which were seized in his presence. He has signed in the concerned slips. Inquest Panchnama is produced at Exh. 36. Exh. 37 is the panchnama of arrest as well as physical condition of accused Laxmanbhai @ Lakhabhai Pratapbhai Thakor and Exh. 38 is the panchnama of arrest as well as physical condition of accused Gauriben Pratapbhai Thakor.

7.8 The prosecution has then testified PW-4 Dhanabhai Chaturbhai at Exh.41, who is the complainant and brother of the

deceased victim. He has narrated that on 19.08.2004, the incident had occurred. On receiving the telephonic information from the father-in-law of the deceased victim to the effect that the victim was burnt, he replied that he is suffering from fever. He was further informed that they were taking the deceased to the Patan hospital. Thereafter, this witness along with his mother - Muliben and other person namely Dineshbhai left for Vadgam. When they reached at Shankheshwar, they saw a white coloured car in which, they saw the father-in-law of the deceased and one of relatives namely Nanuji and hence, they got stopped the car and saw his sister lying in the middle seat of the car and in conscious condition. Her face was burnt. On inquiry about the burning, the deceased victim replied in piecemeal that her mother-in-law – Gauriben, father-in-law – Pratapji and her husband Laxmanji demanded Rs.10,000/- and asked her to bring the same from her brother to which, she replied saying that once she had brought an amount of Rs.5,000/- from his brother in the absence of his father and therefore, she would not bring Rs.10,000/- again from her parental home. Therefore, on being instigated by his father-in-law and the mother-in-law, her husband beat her up. Therefore, she had left the house where her parents-in-law were residing and went to the place where she along with her husband were residing separate and sat herself ablaze by pouring kerosene. It is also deposed by this witness

that before one and half years also, her sister came to her house due to harassment by her father-in-law, mother-in-law as well as her husband and also informed about the cruelty due to demand of money. It is also stated that for eight months, she was at her parental house *(risamne).* Thereafter, the complainant persuaded her and sent her back to the matrimonial home. This witness has also stated that Rs.5,000/- was given to her sister, which is yet not returned. Further, her sister (deceased) used to complain about physical and mental harassment by the respondents for dowry and on household works. This witness has admitted his signature in the complaint, Exh. 42. He has also identified all the accused persons who were present in the Court. This witness was cross-examined by the defence, where there appears some minor contradictions. He has not stated that he was owning a car. Further, he has also not stated in his complaint that they saw a white car and behind them, he went to Patan Hospital in his car. He has also admitted that after the message of burning of his sister, he had not visited Vadgam. He has denied that his sister had died due to accidental burning through primus while preparing *roti.* He has also denied that he had got the news about accidental burning of his sister while preparing roti on primus and death of his sister. He has admitted that he had asked her sister to write him the letter, however, no such letter is produced on record. He has admitted that he had

not informed about any such harassment to the police. He has admitted that in his community (Thakor), one can easily have divorce and can easily go for second marriage. It is also admitted that the accused Laxmanji and Pratapji have agricultural land (*khetivadi*) and are financially sound. He has denied that a false complaint is filed for availing more money from the accused persons. He has also denied that he is giving false deposition.

7.9 At this juncture, it is pertinent to note that not a single question is asked by the defence so far as the status of his dying sister / victim is concerned that she was uttering in piecemeal, levelling allegations against the accused persons including father-in-law, mother-in-law and her husband *qua* demand of Rs.10,000/- and Rs.5,000/- which was given on earlier occasion and cruelty and physical and mental torture to which, the victim was being subjected to.

7.10 It is the cardinal principal of law that whenever the facts deposed by any witness/es in the examination-in-chief remain uncontested / uncontroverted by the defence, in such circumstance, the evidence adduced before the Court is believable and admissible in evidence. In the case on hand, the complainant in his complaint as well as in his examination-in-chief on oath has deposed the fact with regard to the oral dying

declaration given by the deceased, however, the same is not controverted by the defence in cross-examination and therefore, it is admissible in evidence. In depth perusal of the impugned judgment and order reveals that the learned Judge has failed to appreciate such an aspect in his judgment, which was very much material and important moresowhen the brother of the deceased victim had come forward with a specific case of demand of dowry coupled with cruelty.

7.11 The prosecution has also testified PW-5 Muliben Chaturbhai at Exh.45. She is the mother of the deceased who deposed that the incident had happened during the marriage span of three years. Her daughter had married with the accused No. 1 – Laxmanji Pratapji Thakor. She has also supported the case of the prosecution. Though she is a hearsay witness so longer as cruelty is concerned. Here also, the denial of so-called allegation is not taken by the defence so longer as the incident of car is concerned. Though the defence has taken the point of only demand of money wherein this witness has denied that it is not true that the in-laws were not asking for money, meaning thereby, the mother has supported the case of the prosecution to that effect.

7.12 The prosecution has then testified PW-6 – Sadhu Dineshbhai

Khemdas at Exh.46. He appears to be the Driver and has fully supported the case of the prosecution including the statement made by the deceased victim who was in the car wrapped with a bed-sheet and when the bed-sheet was taken off by brother of the deceased - Dhanabhai Chaturbhai, he had seen that the face of Ramilaben was burnt and she was conscious and on an inquiry by the brother, victim Ramilaben replied in piecemeal and levelled the same allegations which were discussed herein above in preceding depositions. Further, here also the defence has tried to disprove such fact in single question that it is not true that Ramilaben has not informed anything to Dhanabhai Chaturbhai wherein the present witness has answered in negative, and thus, this witness has fully supported the case of the prosecution. However, the learned Judge has not appreciated the evidence of this material witness, and therefore, it appears that the findings recorded by the learned Judge are perverse.

7.13 Next is PW-7 Kanujibhai Chaturjibhai, Exh. 47. He appears to be the brother of deceased. He has also deposed what his brother, the complainant has deposed. He has admitted in cross-examination that his statement was recorded after 4-5 days of the incident. Here also he has supported the material allegation of demand of Rs.10,000/- and cruelty by father-in-law and mother-in-law as well as husband of the deceased victim.

7.14 The prosecution has then examined PW-8 Dr. Jayeshbhai Ranchhodbhai Rathod, Exh. 49. He has categorically stated that the death of the deceased was caused due to major burns. He has admitted that if kerosene spills out from the primus and if somebody falls down upon the same, in that case, smell may come from the part of the body upon which, kerosene stuck.

7.15 The others are the police witnesses:

7.16 Thus, almost all the prosecution witnesses have supported the case of the prosecution. It is argued that material witnesses are the interested witnesses and no independent witness has been examined. In this regard, it would be worthwhile to refer to a decision of the Apex Court in ***Seeman alias Veeranam v. State, MANU/SC/0395/2005***, the Apex Court has held as under:

> *"4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible.* ***The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR***

> ***by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement****."*
>
> ***(emphasis supplied)***

7.17 Thus, as held in the aforesaid decision that if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness and the prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case.

7.18 Further, it is pertinent to note that the learned Judge has also arrived at conclusion that so longer as the issue pertaining to unnatural death is concerned, the inquest panchnama is proved and supported by the panchas. Further, the marriage span of the deceased victim with accused Laxmanji is also considered by the learned Judge as an undisputed fact.

7.19 The Court has gone through the decisions relied upon by the learned advocate for the respondents in detail. There cannot be any dispute as regards the ratio laid down in the same,

however, in the facts and circumstances of the case on hand, the same are not applicable inasmuch as, most of the decisions are related to written dying declaration, whereas, the case on hand relates to the oral dying declaration, which appears to be trustworthy, reliable and supported by the evidence of the prosecution witnesses. So far as the decision in ***Suryakant Dadasaheb Bitale (supra)*** is concerned, the scope of revisional jurisdictional is narrated. It is observed in para 11 as under:

> *"11. The scope of revisional jurisdiction was considered by this Court in K. Chinnaswamy Reddy v. State of A.P. and held as follows:*
>
> > *"Where the appeal court wrongly ruled out evidence which was admissible, the High Court would be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised after taking into account the evidence which was wrongly ruled out as inadmissible of the evidence and should not go further and appraise the evidence also..."*

7.19.1Further in para 12 of the said decision it is observed as under:

> *"12. In Akalu Ahir v. Ramdeo Ram, this Court held that where the material evidence have been overlooked by the trial Court or Sessions Court, the High Court in revisional jurisdiction can interfere with the finding of acquittal."*

7.20 Thus, where the evidence is wrongly ruled out as inadmissible or where the material evidence have been overlooked by the trial Court or the Court of Sessions, the High

Court, in revisional jurisdiction can interfere with the finding of acquittal. Instant is the one such case, wherein, as discussed herein above, the learned Court of Sessions has overlooked the material evidence and accordingly, this Court, while exercising revisional jurisdiction, is very well equipped and to set the things right.

7.21 Thus, upon re-appreciation and reevaluation of the evidence adduced by the prosecution, following salient aspects have been weighed with by the Court:

i) indisputably, the marriage span of the deceased was about three years only and the deceased had committed suicide at her matrimonial home and hence, the provisions of Section 113A of the Evidence Act would attract;

ii) the deceased was conscious and able to talk when the complainant first met her while en route hospital after she sustained burn injuries;

iii) the deceased – victim has, in no uncertain terms, had conveyed the complainant about the cruelty and harassment at the hands of the respondents for want of dowry;

iv) complainant – Dhanabhai Chaturbhai, Exh. 41, mother of deceased Muliben Chaturbhai, Exh. 45, Sadhu Dineshbhai Khemdas, Exh. 46 (independent witness), and Kanujibhai Chaturjibhai, Exh. 47 have clearly supported the

case of the prosecution;

v) oral dying declaration given by the deceased, which was given in presence of accused – husband while in the car en route hospital, has remained uncontroverted by the defence (respondents – accused);

vi) even independent witness, viz. Driver Sadhu Dineshbhai Khemdas (Exh. 46) has also supported the case of the prosecution;

vii) so far as some contradictions in the depositions of the prosecution witnesses are concerned, it would be apt to refer to a decision of the Apex Court in ***State of U.P. v. Naresh and Ors., MANU/SC/0228/2011****, wherein, the Apex Court has held as under:*

> ***"25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution***

version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility*.*

xxx"

(emphasis supplied)

Thus, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The Court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. In the instant case, there may be contradictions in the deposition/s of witness/es, however, the same cannot be termed as so major so as to reject the case of the prosecution in entirety.

viii) it is trite that a person on the deathbed, would not speak lie.

ix) recently, the Apex Court in the case of ***Laltu Ghosh v. State of West Bengal, MANU/SC/0236/2019 [Criminal Appeal No. 312 OF 2010, decided on 19.02.2019]*** *has an occasion to discuss the oral Dying Declaration. In para 18, it is observed as under:*

"It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated by other evidence. A dying declaration, if found reliable, and if it is not an attempt by the deceased to cover the truth or to falsely implicate the accused, can be safely relied upon by the courts and can form the basis of conviction. More so, where the version given by the deceased as the 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. The doctor PW-18, who recorded the statement of the deceased which was ultimately treated as his dying declaration, has fully supported the case of the prosecution by deposing about recording the dying declaration. He also deposed that the victim was in a fit state of mind while making the said declaration. We also do not find any material to show that the victim was tutored or prompted by anybody so as to create suspicion in the mind of the Court. Moreover, in this case the evidence of the eye-witnesses, which is fully reliable, is corroborated by the dying declaration in all material particulars. The High Court, on re-appreciation of the entire evidence before it, has come to an independent and just conclusion by setting aside the judgment of acquittal passed by the Trial Court. The High Court has found that there are substantial and compelling reasons to differ from the finding of acquittal recorded by the Trial Court. The High Court having found that the view taken by the Trial Court was not plausible in view of the facts and circumstances of the case, has on independent evaluation and by assigning reasons set aside the judgment of acquittal passed by the Trial Court. We concur with the judgment of the High Court, for the reasons mentioned supra."

x) further, recently, in the case of ***Naresh Kumar v. Kalawati & Ors., MANU/SC/0218/2021 [Criminal Appeal No. 35 of 2013, decided on 25.03.2021]****, the Apex Court in para 9 has observed as under:*

"9. A dying declaration is admissible in evidence under Section 32 of the Indian Evidence Act, 1872. It alone can also form the basis for conviction if it has been made voluntarily and inspires confidence. If there are contradictions, variations, creating doubts about its truthfulness, affecting its veracity and credibility or if the dying declaration is suspect, or the accused is able to create a doubt not only with regard to the dying declaration but also with regard to the nature and manner of death, the benefit of doubt shall have to be given to the accused. Therefore much shall depend on the facts of a case. There can be no rigid standard or

yardstick for acceptance or rejection of a dying declaration."

In the case on hand, the last statement made by the deceased victim was the same which is reiterated by the complainant / the first informant (the brother of the deceased victim) as well as the driver of the car of the complainant. Therefore, there is no reason to disbelieve the same.

xi) the learned Sessions Judge has also taken into consideration Further Statements of the accused under Section 313 of the Code and in the facts and circumstances of the case, has discarded the case of the defence that the death was accidental i.e. due to burn injuries while cooking and in the given facts and circumstances of the case and considering the evidence on record, has rightly arrived at the conclusion that deceased Ramilaben had committed suicide (para 33 & 34 page 48-50 of the impugned judgment).

7.22 It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the Court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the

linchpin around which, the administration of criminal justice revolves.

Conclusion:

8. Thus, on re-appreciation and reevaluation of the oral and the documentary evidence on record, it transpires that the prosecution has succeeded in proving the case against the accused beyond reasonable doubt inasmuch as the ingredients of the offence alleged are fulfilled. The Court has gone through in detail the impugned judgment and order and found that the learned Judge has failed to consider the evidence on record in its true and proper perspective and came to the wrong conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

9. For the forgoing discussion and observations, the present appeal as well as the criminal revision application succeed and are allowed accordingly. Impugned judgment and order dated 10.07.2007, passed in Sessions Case No. 29 of 2004, by the learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 1, Dhrangadhra, recording the acquittal is hereby set aside. Respondents – accused i) **Laxmanbhai @ Lakhabhai Pratapbhai Thakor, ii) Pratap Valabhai Thakor and iii) Gauriben W/o. Pratapbhai Valabhai Thakor** are held guilty

and convicted for the offences punishable under Sections 306 and 498-A r/w. Section 114 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Dowry Prohibition Act.

10. As per the settled legal position and catena of decisions of the Apex Court, where the minimum punishment is prescribed for an offence and the Court proposes to impose the minimum punishment only, in that case the Court is not required to hear the accused on the quantum of sentence. However, in the present case, the respondents – accused are held to be guilty for the aforesaid offences where no minimum punishment is prescribed for and accordingly, the Court has heard the respondents, who are present in the Court as well as the learned advocate representing the respondents so also the learned Additional Public Prosecutor on the quantum of punishment under Section 235(2) of the Code.

10.1 The learned advocate for the respondents has submitted that the respondent Nos. 2 and 3 are old aged and the respondent No. 2, the father-in-law is also not keeping well. Further, the respondent No. 1 has the responsibility of the respondent Nos. 2 and 3. Besides, the learned advocate for the respondents submitted that the impugned judgment and order of acquittal is of 2007 and more than a decade has been elapsed

thereafter and accordingly, considering the extant circumstances, since the Court has found the respondents guilty of the offences charged against them, it is urged that the Court may show some leniency in imposing the sentence.

10.2 As against this, the learned APP for the appellant – State has urged that the respondents were charged with the offences punishable under Sections 498-A, 306 and 114 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Dowry Prohibition Act. Accordingly, since the maximum punishment for the offence punishable under Section 306 IPC is up to 10 years and fine, looking to the nature and gravity of offence, maximum punishment may be imposed.

10.3 Nonetheless, the learned Additional Public Prosecutor for the appellant – State, upon instructions, states at bar that so far as the respondent No. 2 - Pratap Valabhai Thakor is concerned, he is suffering from paralysis and is unable to remain present before the Court. The learned Additional Public Prosecutor, made available the copy of statement of even date, recorded before the Police Sub Inspector, Dasada Police Station, accompanied by copy of the medical paper of Community Health Center, Dasada, which is taken on record, a perusal of which reveals that the respondent No. 2 is suffering from paralysis and is bedridden. He

is unable to move or stand-up on his own. He was undergoing treatment at Kunpur village, however, he does not have any papers to that effect.

10.3.1 In the given circumstance, the learned advocate for the respondents has requested to differ the pronouncement of sentence *qua* the respondent No. 2.

10.3.2 In this regard, reference can be made to Section 353 of the Code, more particularly, clause (6) of the same, which speaks that, if the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted: ***Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence***.

10.3.3 Further, as per clause (7) to Section 353, ***no judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his***

pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

10.3.4 Besides, the Court has also gone through an order passed by the coordinate Bench in Special Criminal Application (Quashing) No. 9113 of 2116 on 22.02.2017, wherein, it is observed that there is no illegality could be said to have been committed, if the judgment and order of conviction and sentence is passed in the absence of the accused. Accordingly, the Court deems it proper to proceed with the matter.

11. Heard the learned advocates for the parties on the quantum of sentence to be awarded to the respondents – accused for the offences punishable under Sections 498-A, 306 and 114 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Dowry Prohibition Act to which, they are held to be guilty. It is settled principle of criminal justice system that if a perpetrator of crime is sat free, in that case, the concept of deterrent theory may not work and there might be adverse effect upon the society. Further, one of the objects of imposing the punishment is to see that other may not prone to such crimes in future. Besides that, in the contemporary situation, the suicidal death by

married women is alarming one. Nonetheless, simultaneously, the Courts, while passing the orders of sentence, should also consider the facts and circumstances of each case. Accordingly, having regard to the submissions advanced and looking to the facts and circumstances of the case on hand, the respondents – original accused are ordered to undergo the following sentence:

Accused	**Offence**		
	306 r/w. 114 IPC	**498-A r/w. 114 IPC**	**3 & 7 Dowry Prohi. Act**
No. 1 - Laxmanbhai @ Lakhabhai Pratapbhai Thakor	**Rigorous Imprisonment (RI)** for **5 years** with fine of **Rs.25,000/-** and i/d. of payment of, **simple imprisonment (SI)** for **6 months**	**RI** for **2 years** with fine of **Rs.5,000/-** and i/d. of paying fine, **SI** for **1 month**	**RI** for **6 months** with fine of **Rs.1,000/-** and i/d. of payment of fine, **SI** for **1 month**
No. 2 - Pratap Valabhai Thakor	**SI** for **1 year** with fine of **Rs.25,000/-** and i/d. of payment of, **SI for 3 months**	**SI** for **1 year** with fine of **Rs.5,000/-** and i/d. of paying fine, **SI** for **1 month**	**SI** for **6 months** with fine of **Rs.1,000/-** and i/d. of payment of fine, **SI** for **1 month**
No. 3 - Gauriben W/o. Pratapbhai Valabhai Thakor	**SI** for **1 year** with fine of **Rs.25,000/-** and i/d. of payment of, **SI for 3 months**	**SI** for **1 year** with fine of **Rs.5,000/-** and i/d. of paying fine, **SI** for **1 month**	**SI** for **6 months** with fine of **Rs.1,000/-** and i/d. of payment of fine, **SI** for **1 month**

i) All the sentences are to run concurrently.

ii) The sentence already undergone by the respondents – accused is ordered to be given set off.

iii) The respondents – original accused are directed to surrender to custody on or before **30th August 2022** to undergo the remaining sentence as aforesaid, failing which, the learned Sessions Judge concerned is at liberty to issue warrant to secure the custody of the respondents – accused.

iv) Bail bond, if any, shall stand cancelled accordingly.

v) Fine, as aforesaid, be deposited by the respondents within **4 (four) weeks from today**.

vi) Out of the total fine amount of Rs.93,000/-, that may be deposited by the respondents, Rs.90,000/- towards fine, be given to the original complainant – Dhanabhai Chaturbhai by the learned Court, on proper verification and following due procedure. Further, it is reported that the deceased had a child out of the wedlock namely Rahul. Accordingly, complainant Dhanabhai

Chaturbhai is directed to invest Rs.80,000/- (out of Rs.90,000/-) in his name (Rahul) in any nationalized bank, till he gets major, else for five years, in cumulative fixed deposit. The original complainant be intimated and informed by the concerned Court below accordingly.

11.1 Registry to make available a copy of this judgment to the learned advocate for the respondents – accused and the learned Additional Public Prosecutor as well as to send to the learned Court below, forthwith. A copy be also sent to the Superintendent of Police, Surendranagar and the District Magistrate, Surendranagar.

11.2 Registry to also transmit back the R&P to the trial Court concerned forthwith.

[A. C. Joshi, J.]

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