IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 702 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

==========

Approved for Reporting	Yes	No
	√	

==========

BAJIBEN PRABHATBHAI PARMAR
Versus
STATE OF GUJARAT

==========

Appearance:
MR VIJAY H PATEL FOR HL PATEL ADVOCATES(2034) for the Appellant.
MR BHARGAV PANDYA APP for the Opponent(s)/Respondent No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 13/03/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 22.11.2012 passed by the learned 2nd Additional Sessions Judge, Panchmahal at Godhra in Sessions Case No.161 of 2009 for the offences punishable under Section 302 of the Indian Penal Code, whereby the appellant–accused has been sentenced for the offence punishable under Section 302 of the IPC to undergo

imprisonment for life with fine of Rs.500/-, in default, to undergo six months RI, the appellant has preferred the present appeal under Section 374 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1 Deceased-sister of the complainant – Rayliben had some altercation with Surekhaben–daughter of Rameshbhai Bhagwanbhai Parmar's wife with regard to picking up of the cotton irrigated in the agricultural field of the accused on 30/06/2009 and by keeping grudge over the said dispute and with an intention to commit murder of Rayliben, on 30/06/2009 at about 10:00 p.m., while the deceased– Rayliben was sleeping on the cot outside her house at Village Vatvatiya, Tal. Lunawada, Dist: Panchmahal, at that time, the accused brought kerosene in the steel vessel alongwith match-stick box and thereafter poured the same on the deceased and ignited her with match-stick resulted into burn injuries on the hands, leg and stomach and on her private part who succumbed to the said injuries on 11/07/2009 at 23:00 hours during the treatment at Godhra Civil Hospital. Thus, the accused committed the offence punishable under Section 302 of the IPC.

2.2 Accordingly, FIR being CR No.82 of 2009 came to be registered with Kothamba Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 302 IPC, the case was committed to the Sessions Court. On conclusion of evidence on the part of the prosecution, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as

provided under Section 313 of the Code. In the further statement, the respondents-accused denied all incriminating circumstances appearing against them as false and further stated that she is innocent and a false case has been filed against her. After examining the evidence, witness testimonies and submissions from both sides, the learned Sessions Court recorded the finding convicting the respondent-accused.

3. We have heard Mr.Vijay H Patel, learned Advocate for HL Patel Advocates for the appellant – convict and Mr.Bhargav Pandya learned APP for the respondent-State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Learned advocate Mr.Patel appearing for the appellant– accused has submitted that the prosecution has failed to prove its case beyond the reasonable doubt and therefore, learned Sessions Court has erred in convicting the appellant – accused. He would further submit that though the husband of the deceased was very well available, but he did not register the complaint and it was given by the Sarpanch who happens to be the cousin of the deceased. He would further submit that daughter of the deceased who was also sleeping next to the deceased has not been examined in spite of the fact that she did not receive any burn injuries.

4.1 Learned advocate Mr.Patel for the appellant while referring to the medical evidence would submit that as per evidence of PW 16 – Dr. Ramesh Kalasva who gave primary treatment to the deceased at Lunawada Hospital states that the injuries sustained on the deceased does not seem to be injuries sustained as a result of burn and no curd was found on the body of the deceased which fact is contradicted with the statement of the husband of the deceased who has been examined as PW

7 stated that he applied curd on the body of the deceased after the incident. It is further submitted by learned advocate for the appellant – accused that though deceased sustained burn injuries by poring kerosene; however during physical examination of the deceased and her husband by the Doctor who is examined as PW No.16 denies the smell of kerosene on the body of the deceased as well as the husband and thus the evidence of PW No.7 comes under the shadow of doubt and cannot be accepted.

4.2 Learned advocate Mr.Patel for the appellant has submitted that if the evidence of PW No.6 who is Executive Magistrate examined at Exh.92 recorded the dying declaration of the deceased had not taken any endorsement of the Doctor as to whether the deceased was in fit state of mind or not for recording dying declaration and thus the credibility of the dying declaration is doubtful. He would further submit that if the Panchnama of the place of the incident at Exh.35 is seen, it shows that there was no smell of kerosene on the ground and thus the prosecution has not proved its case beyond all reasonable doubt.

4.3 Learned advocate Mr.Patel for the appellant – accused would submit that considering the infirmities and contradictions in the evidence so adduced by the prosecution, the learned Sessions Court has committed a grave error in recording the conviction of the appellant – accused. By making the above submissions, learned advocate for the appellant – accused would submit to allow this appeal and to quash and set aside the judgment and order of conviction and sentence.

5. Mr.Bhargav Pandya, learned APP appearing for the respondent – State submits that the impugned order of conviction and sentence does not require to be interfered with as the learned Sessions Court has after thorough appreciation of evidence has come to the conclusion and

recorded the conviction of the appellant – accused on the basis of the evidence adduced before the Court. It is further submitted that the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of the witnesses examined before the Court has supported the case of prosecution and narrated the incident as it was happened. It was submitted that no such omission or contradiction in the evidence of the said witnesses have come on record to discard their evidence. He has further submitted that the prosecution witnesses have deposed before the Court narrating the entire chain of sequence whereby the involvement of the accused is proved which corroborates with the scientific evidence produced and proved by the prosecution and therefore, the judgment and order of conviction and sentence may not be interfered with.

6. Heard Mr.Vijay H Patel, learned Advocate for HL Patel Advocates for the appellant – convict and Mr.Bhargav Pandya learned APP for the respondent-State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, if the facts of the case on hand is examined, it would appear that deceased-sister of the complainant–Rayliben had some altercation with Surekhaben – daughter of Rameshbhai Bhagwanbhai Parmar's wife with regard to the picking up of cotton irrigated in the agricultural field of the accused on 30/06/2009 and by keeping grudge over the said dispute and with an intention to cause murder of Rayliben on 30/06/2009 at about 10:00 p.m., while the deceased–Rayliben was sleeping on the cot outside her house at Village Vatvatiya, Tal. Lunawada, Dist: Panchmahal, at that time, the accused brought kerosene in the steel vessel alongwith match-stick box and poured on the deceased

and ignited her with match-stick which resulted into burn injuries on the hands, leg and stomach and on her private part and succumbed to the said injuries.

8. In background of the above facts, if the evidence adduced by the prosecution is re-appreciated, PW No.1 – Kalubhai Magabhai examined at Exh.10 is examined, he has deposed in his testimony that incident of Rayliben took place in the seventh number of month; and he came to know through his brother–in– law that Rayliben got burnt; on the next day, he went to Godhra Civil Hospital and since her sister was admitted in the Civil Hospital and upon inquiry as to what had happened, she told that her sister-in-law–Bajiben poured kerosene on her and ignited with match-stick and therefore, she got burnt. This witness has thereafter gone to Kothamba and gave complaint. This witness has deposed that having asked about the cause of incident, Rayliben stated to him that due to picking up of cotton by the children, the grudge was kept and by pouring kerosene, deceased was ignited with match-stick by Bajiben.

This witness has been cross-examined by the other side; however nothing sort of any such material to disbelieve this evidence has come on record. In fact, the cause of incident is of picking up of cotton by children and by keeping grudge over the said dispute, accused poured kerosene and ignited with match-stick to the deceased where she succumbed to the said burn injuries. Thus, the evidence of the complainant clearly supports the case of prosecution and nothing to the contrary has come on record.

9. PW No.5–Raghabhai Hirabhai Zala, has been examined at Exh.16. This witness has deposed in his testimony that deceased–Rayliben is his sister-in-law and she got married with one Rameshbhai. This witness has

deposed in his testimony that incident took place on 30/06/2009 and on the day of incident, he was at his home and at 10:00 p.m. Bharsinh, Sarpanch had come to his house and told that Rayliben got burnt and therefore, she was to be taken to dispensary and thus he alongwith his wife – Kankuben reached at 108 Ambulance which consisted of this witness and his wife, Rayliben, Divaben and Rameshbhai and took Rayliben at Lunavada Dispensary and there-from she was taken to Godhra Hospital where she was admitted. Rayliben got burnt injuries on her chest, hands and legs. In the car, Rayliben stated to this witness that her sister-in-law – Bajiben got her burnt after pouring kerosene over her. Rayliben stayed alive for ten-twelve days.

This witness has been cross-examined by the defence; however nothing sort any such material to discard the evidence of this witness has come on record. Witness has admitted that they all went to Lunawada Cortege Hospital where after giving treatment, Rayliben was referred to the Godhra Civil Hospital and she was admitted in the Burns Ward of Godhra Civil Hospital. Thus, from the evidence of this witness, the case of prosecution that after the deceased got burns injuries, she was taken to Lunawada Hospital where-from she was taken to Godhra Civil Hospital is proved.

10. PW No.6 – Shri Ajaykumar Shah, Executive Magistrate, is examined at Exh.18. This witness has deposed in his testimony that on 01/07/2009, he was serving as Deputy Mamlatdar and Executive Magistrate and at 2:00 a.m., in the night, he received a Yadi from Godhra Town Police Station for Diary No.2 of 2002 & Janvajog Entry No.29 of 2009 to record dying declaration of victim – Rayliben Rameshbhai Parmar, resident of Mochvadiya, admitted for treatment in the Burns Ward, Civil Hospital, Godhra. This witness has further deposed that on

receipt of Police Yadi alongwith opinion of Doctor, he went to Burns Ward of Civil Hospital, Godhra in the Police Van where he inquired about Rayliben and relatives of Rayliben got him introduced with her. Thereafter, the relatives were sent outside and he started recording of dying declaration. He started recording of dying declaration at 2:10 a.m. and patient told her name as Rayliben and upon asked her as to what had happened, she stated that she got burnt. Upon asked her as to how did the incident took place, she stated that yesterday night she had some altercation / quarrel with Bajiben Prabhatbhai and therefore, at about 10:00 to 10:30 hours, while she was sleeping Bajiben came, poured kerosene on her, ignited with match-stick and left. Thereafter, after going Lunawada Hospital, she was brought to Godhra Hospital. She got burnt on the legs and on chest. Thereafter, having asked to anything more, she stated that she does not want to say anything more. Dying declaration being read over and left hand thumb impression was taken on it and original dying declaration was produced at Exh.19. The proceedings for recording of dying declaration was completed on 2:30 p.m.

This witness has been cross-examined by the defence; however nothing sort any such material to disbelieve the evidence of this witness has come on record. During the cross-examination, this witness has admitted that while going from his residence to Civil Hospital, no such talks were taken place with the Police and he was alone in the burns ward. This witness has admitted that it is true that on the dying declaration at Exh.19, the signature of the Doctor was not taken and this witness has himself stated that while recording dying declaration, the doctor was not called at that place since the patient was conscious. It is true that it is not stated to him by any of the Doctor that patient was capable of being given dying declaration. Witness has identified the Yadi received by him at Exh.20.

Thus, from the evidence of this witness, the prosecution has proved that declarant was conscious while giving her dying declaration and the witness himself was satisfied that patient was conscious to give her dying declaration and therefore Doctor was not called for. It was proved that patient was in fit state of mind to record dying declaration as the Executive Magistrate, who recorded the dying declaration was satisfied with the fact of declarant being conscious and in fit state of mind to record dying declaration.

11. PW No.7-Rameshbhai Bhagvanbhai Parmar, husband of the deceased is examined at Exh.22. This witness has deposed in his testimony that incident took place at 10:00 p.m. on 30/06/2009 and he was alone at that time and were sleeping alongwith his daughter, at that time, Baijiben (accused) sister-in-law of his uncle brought kerosene in steel utensil, poured on his wife and ignited her and, while accused was leaving, his daughter – Surekha suddenly started screaming and therefore, he was awaken. Bajiben was carrying steel utensil and he found her running and his wife was burning. This witness tried to douse his wife and after dousing his wife, he went to house of Bhemabhai Rupabhai and asked to call for 108 Ambulance and thereafter this witness went to house of Suryaben and brought curd and applied on the body of his wife as she was feeling sensation due to burn injuries. This witness has further deposed that thereafter they all initially went to Lunawada Hospital where-from they went to Godhra Civil Hospital where she was admitted. This witness has deposed that cause of incident is that the daughter of this witness picked up the cotton from the field of the accused and therefore, she abused her. This witness has further deposed that when he, Divanben, Kankuben, Radhabhai asked Rayliben about the incident, she stated that she was burnt by Bajiben by pouring kerosene on her.

This witness has been cross-examined by the defence; however nothing sort of any such material to discard his evidence has come on record. The presence of this witness at the scene of incident is natural as he was the husband of the deceased and witness had himself seen the accused running away carrying utensil and in presence of other when this witness asked the deceased about the incident, she herself stated that she was burnt by Bajiben after pouring kerosene on her. The prosecution has proved from the evidence of this witness the factum of accused was present at the scene of offence at the time of commission of crime and running away after committing a crime carrying in her hand the steel utensil.

12. PW No.20 – Indrasinh Arjunsinh, Unarmed Head Constable, has been examined at Exh.58. This witness has deposed in his testimony that on 01/07/2009, he was serving as Head Constable at Kothamba Police Station and on that date, Janvajog Entry No.29 of 2009 came to be registered. This witness has further deposed that he recorded the statement of the victim–Rayliben Rameshbhai Parmar and her husband Rameshbhai and further investigation was handed over to PSI.

Rayliben Rameshbhai stated that she was living at the above stated address and in regards to commission of offence, she stated that her daughter came at 11:00 O'clock from the school at that time her sister-in-law, Bajiben Prabhatbhai, who resides in front of her house and her husband's elder brother's wife (jethani), had an altercation with her alleging that her daughter, Surekha had picked up the cotton and in response thereto, she stated that what can be done as her daughter denied to do so. She has further stated that at about 10:00 O'clock in the night while she alongwith her husband and children total four persons were

sleeping in the courtyard of the house whist her daughter - Surekha was sleeping nearby her at that time, her sister-in-law, Bajiben carrying steel utensil containing kerosene and match-stick came there and without saying anything poured kerosene on her and ignited with match-stick and therefor, Chaniyo and blouse worn by her got ignited and she therefore, started screaming where her husband and daughter Surekha got awaken and Bajiben ran away. She has further stated that her husband doused the fire; but she got burnt on both the legs, thigh portion and private part and on the stomach portion. She has further stated that since her husband tried to douse her, he also got burnt on right hand and right side chest. She has further stated that her sister-in-law Bajiben went away after igniting her, Suryaben Kantibhai Jesingabhai Parmar and Kankuben Radhabhai Parmar Zala came and after some time Bhemabhai Rupabhai Parmar called for 108 Ambulance and she alongwith her husband went to Lunavada Cottage where treatment was given to her and her husband and thereafter she was referred to Godhra Civil Hospital for treatment. She stated that her Chaniyo was completely burnt.

PW No.20- Indrasinh had recorded the above statement of the victim for the first time after registration of Janvajog Entry wherein she has clearly stated about the cause of incident and the manner in which the entire incident took place, as also stating that how the accused came, poured the kerosene, ignited with match-stick and thereafter ran away from the spot. Thus, from the evidence of this witness who recorded the statement of the victim the involvement of the accused is proved.

13. PW No.15 – Dr. Kamlesh Shivnandan Prasad has been examined at Exh.44 who had conducted the postmortem of the body of the deceased. This witness has deposed in his testimony that he conducted the postmortem of the deceased and as per opinion of this witness, the cause

of death of the deceased was septicemic shock due to burn. This witness has further deposed that if the kerosene is poured and ignited with matchstick on any of the person; then the injuries stated in column no.17 of the postmortem report can be caused and the said injuries are sufficient to cause death. This witness has further deposed that burn injuries are of second degree.

14. In light of the above evidence re-appreciated by this Court, the undisputed facts emerging from the record are that (i) there was a dispute with regard to picking up of a cotton from the agriculture field of the accused by daughter of the deceased to which some altercation took place (ii) in furtherance thereof by keeping grudge over the said dispute, the accused went to the house of the deceased taking steel utensils containing kerosene and match-stick and after pouring the same ignited her with match-stick and thereafter left away from the spot (iii) while the deceased got burnt she started screaming and her husband got awaken and tried to douse his wife and saw the accused running away from the spot (iv) while husband of the deceased doused the fire on his wife, he also got burnt injuries (v) while the deceased was taken to the hospital in the 108 Ambulance she had stated that Bajiben poured kerosene on her and ignited with match-stick.

15. Thus, the entire sequence of incident is proved from the evidence of the witnesses examined before the Court, more particularly, the cause of incident, presence of accused at the spot prior to and running away from the spot after the incident is proved from the aforesaid evidence and learned Sessions Judge has rightly believed the same while convicting the appellant – accused.

16. Now, insofar as the credibility and trustworthiness of the dying

declaration is concerned, the argument of the learned advocate for the appellant that since it was recorded by the Executive Magistrate and he did not obtain the endorsement of the Doctor as to whether the declarant was in fit state of mind or not; it cannot be believed as a sole piece of evidence to record the conviction.

17. At this juncture, it would be apt to refer to the decision of the Hon'ble Apex Court in the case of ***Poonam Bai vs. The State Of Chhattisgarh*** rendered in ***Criminal Appeal No.903 of 2018***, more particularly, paragraph 10 thereof which is quoted as under:

> "*10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires the full confidence of the court. In the matter on hand, since Exh. P2, the dying declaration is the only circumstance relied upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the*

wellestablished principles regarding the acceptability of dying declarations."

(emphasis supplied)

18. Keeping in mind the aforesaid legal position, if the evidence in regards to dying declaration in the case on hand is seen, the dying declaration was recorded by PW No.6–Mr.Ajaykumar, Executive Magistrate, after following all due process as stated by him in his evidence and during the course of cross-examination, the witness has himself has stated and admitted that while recording the dying declaration of the patient, since the patient was conscious, the doctor was not called at the spot. Thus, PW No.6 was fully satisfied about the factum of patient being fit state of mind to give dying declaration and therefore, it was not necessitated by him to call for the Doctor. Furthermore, the evidence of this witness gets corroborated with the evidence of PW No.20–Indrasinh Arjunsinh, Unarmed Head Constable, who firstly recorded the statement of the victim after registration of the Janvajog Entry No.29 of 2009 wherein also the deceased victim had narrated the manner in which the incident took place and the entire sequence. Both the piece of evidence i.e. statement given by the deceased – victim before the PW No.20 and dying declaration recorded by PW No.6 gets corroborated showing the involvement of the accused and no inconsistencies are found therein which would render the dying declaration as unreliable piece of evidence.

19. Thus, from the aforesaid discussion made in consonance with the re-appreciation of the evidence, the factum of the events took place prior to and post the incident as narrated by the deceased while she was admitted in the hospital, as also by her husband who in turn had disclosed the said fact before the complainant, as well as, the fact recorded in the form of dying declaration by the deceased before the Executive

Magistrate who was satisfied about the fitness of the deceased being in fit state of mind to give dying declaration conclusively proved that there are consistency amongst the witnesses in regards to stating of the fact of occurrence of the incident and no such inference can be drawn raising any doubt on credibility of the evidence examined before the Court and thus the prosecution has proved its case beyond all reasonable doubt and no interference is required to be made in the finding arrived at by the learned Sessions Court.

20. In light of the above reasons, this Court does not find any substance in the appeal. The appeal must fails and is accordingly dismissed while confirming the judgment and order of conviction and sentence dated 22.11.2012 passed by the learned 2nd Additional Sessions Judge, Panchmahal at Godhra in Sessions Case No.161 of 2009. The appellant – accused is directed to surrender before the Jail authority concerned within a period of six weeks from today.

Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

sompura

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 13/03/2026 15:44:42