IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1130 of 2007
With
R/CRIMINAL APPEAL NO. 527 of 2008
With
R/CRIMINAL APPEAL NO. 946 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
GIRISHBHAI KARSHANBHAI SAGATHIYA

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Appearance:
MR LB DABHI APP for the Appellant
MR PM LAKHANI(1326) for the Respondent No. 1
MRS R P LAKHANI(3811) for the Respondent No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 03/09/2025

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. The appellant was prosecuted for the offence of murder of his wife under Section 302 of the Indian Penal Code and offence of cruelty under Section 498A IPC. The trial Court acquitted the appellant under Section 302 of Indian Penal Code and found guilty the appellant for the act of culpable homicide not amounting to murder punishable under Section 304 Part-II of the Indian Penal Code.

2. Vide judgment and order dated 04.07.2007 passed in Sessions Case No. 43 of 2006, the Additional Sessions Judge at Amreli convicted the appellant for the offence punishable under Section 498A and 304-Part II of the Indian Penal Code and sentenced to undergo imprisonment of 4 years and pay fine Rs.1000/- and in default of payment of fine, to further undergo additional simple imprisonment for 3 months.

3. The appellant, being aggrieved and dissatisfied with the judgment of conviction and sentence, has preferred Criminal Appeal being Criminal Appeal No. 946 of 2007.

The State being aggrieved with the judgment of acquittal under Section 302 of the Indian Penal Code, has preferred the acquittal appeal being Criminal Appeal No. 527 of 2008.

The enhancement appeal being Criminal Appeal No. 1130 of 2007 has been preferred by the State on the ground of inadequacy of the sentence.

At the time of hearing of conviction appeal, this Court suo-motu took cognizance of insufficient sentence awarded to appellant accused and registered it as Suo-motu Criminal Revision Application No. 508 of 2007 and same is disposed of vide order dated 24.02.2009.

4. Since the facts of the case and issue involved in all these appeals are identical and arise out of the same judgment, all these appeals

are taken up together and are being disposed of by this common judgment.

5. Facts and circumstances giving rise to file these appeals are as under:

5.1 The appellant Girish Sagathiya is resident of village: Balapur, Taluka: Bagasara, Dist.: Amreli. He was married to deceased Jaya and during the wedlock, they blessed with baby boy. After one year of the marriage, there was a matrimonial dispute arise on the petty matters of the family. The husband was used to beat her and she was subjected to mental and physical harassment. She had gone to her parental home because of the matrimonial dispute. The appellant husband brought the wife from parental home upon assurance that, he will take care and no further ill-treatment being given to her. On this premise, the deceased wife Jaya along with child aged about 1 year and more, came to village: Balapur, at her matrimonial home. After 15 days from her returning back, the appellant had started to harass her and used to beat her on the petty issue of household work. The wife was having suspicion about the character of the appellant, as he maintaining extra marital affairs with someone. When the deceased asked the appellant about said relationship, the appellant took it otherwise and the dispute arise between them. In these background facts, on 16.02.2006, the husband being a diamond polisher, had gone to village: Bagasara and at about 12-00 O'clock he returned back to his village. There was no one in the house, because the father and mother of the accused went to village: Gundali to attend the after death rituals.

The husband after taking lunch, again went to village and when he came back, the deceased had inquired from him that where he had gone. On this issue, the dispute arose, as a result, the husband appellant slapped the deceased for twice. The deceased requested the appellant not to beat her and told that she does want to live with him and going to leave the house. The appellant got provoked and told her that he will not permitted to leave house and further said that he will kill her. The appellant in such circumstances, took a plastic cane filled with the kerosene oil and pushed the deceased Jaya on the bed and pouring the kerosene and set her on fire, as a result, she sustained a serious burn injuries and made hue and cry and came in the open place of the house. The appellant after the incident, ran away with the child. The neighbours came to her rescue. The appellant thereafter, came again into the house and took deceased at town - Amreli, where she was admitted in private Sanjivani Hospital of Dr. Rajesh Gadhiya, PW-1.

5.2 Upon registration of the MLC case, the Amreli Police informed the PW-12 Milan Rajyaguru – Executive Magistrate for recording the statement of the deceased. The witness PW-12 could not record the statement, because the deceased was not in a position to make her statement. In the next day i.e. 17.02.2006, the PW-12, was informed telephonically that the deceased was able to make her statement. PW-12, at about 10-45 in morning, went to Sanjivani Hospital at Amreli and obtained the endorsement of the doctor that she is conscious and in a fit state of mind and thereafter, recorded the statement of the deceased, wherein, she alleged that, by pouring

kerosene, she was set on fire by accused husband.

5.3 On the same day i.e. 17.02.2006, due to serious condition of the deceased, she was referred to Higher Center at Rajkot. She was admitted in the Doshi Hospital at Rajkot. Meanwhile, the parents of the deceased arrived at the Amreli Hospital and they accompanied her at Rajkot and before them, the deceased made an oral statement against the accused that, she was burnt alive by accused.

5.4 During the treatment at Doshi Hospital, Rajkot, the Dy.S.P. Amreli – PW-14 - B.S. Pathan, took the visit and recorded the statement of the deceased, wherein, she has stated inter-alia that, the appellant being husband, harassing her and maintaining extra marital affairs with someone and on this issue dispute between them was arisen, and on that ground she was beaten severely by the appellant and when she claimed to leave the house, the appellant got provoked and took the cane of kerosene and by pushing her on the coat, she was burnt alive by pouring kerosene. The statement of the deceased came to be treated as FIR and accordingly, the offence came to be registered under Section 498A and 307 of the Indian Penal Code.

5.5 On 23.02.2006, the appellant accused came to be arrested. The IO during the course of investigation, recorded the statement of the witnesses including the statement of the parents of the deceased, before whom the deceased orally made a statement against the accused. The IO drew the panchnama of place of incident and in the presence of FSL officer, collected the necessary samples for

FSL purpose.

5.6 On 28.02.2006, the deceased succumbed to her injuries at Rajkot. She was having second to third degree burn injuries all over the body and the cause of death as certified by the PM doctor was cardio respiratory failure and septicemia due to extensive burn injuries.

5.7 On account of death of the deceased, the IO with the permission of the Court, added Section 302 of the Indian Penal Code and upon completion of the investigation, the chargesheet for the offence under Section 302 and 498A of the Indian Penal Code came to be filed before the jurisdictional Magistrate at Bagasara. The case being a Sessions triable case, was committed to the Court of Sessions at Amreli.

6. The charges came to be framed against the appellant.

7. In order to prove the charges, the prosecution has examined as many as 17 witnesses and exhibited 21documents.

Oral evidence :

PW 1–Exh.8	Dr. Sandeep Kantilal Maru
PW 2–Exh.12	Dr. Krishna Shashikant Hariyani
PW 3–Exh.15	Dr. Jagdishkumar Khodabhai Solanki
PW 4–Exh.17	Dr. Rameshbhai Chagganbhai Badhiya
PW 5–Exh.19	Dineshbhai Ramjibhai Dafda, Panch witness
PW 6–Exh.21	Dhaniben Kasanbhai Khodabhai, Panch witness

PW 7–Exh.22	Babubhai Chunabhai, Panch witness
PW 8–Exh.24	Mukeshbhai Likhabhai, Panch witness
PW 9–Exh.25	Likhabhai Danabhai Dafda, Panch witness
PW 10– Exh.34	Virjibhai Punabhai
PW 11– Exh.35	Vijyaben Virjibhai
PW 12–Exh.36	Milanbhai Chandrakantbhai Rajyaguru
PW 13–Exh.46	Arvindkumar Keshavlal Bharkhada, Circle Inspector
PW 14–Exh.50	Bismilahkhan Sahebkhan, DYSP
PW 15–Exh.62	Kaneyalal Jamnadas Agrawat, ASI
PW 16–Exh.64	Hadabhai Jivabhai Dafda
PW 17–Exh.66	Lalitkumar Mohanbhai Patel, PSI

Documentary evidence

Exh.54	PSO Bagsara Report
Exh.52	PSO Amreli Report
Exh.51	Complaint
Exh.20	Panchnama of state of body of complainant
Exh.23	Panchnama of place of incident
Exh.26	Panchnama of place of offence
Exh.38	Dying declaration
Exh.27	Panchnama of FSL officers at place of incident
Exh.28	Arrest panchnama
Exh.31	Report of place of incident by FSL
Exh.11	Civil surgeon report
Exh.29	Inquest Panchnama

Exh.13	Medical certificate of Jayaben at Rajkot
Exh.14	Certificate of cause of death of Jayaben at Rajkot
Exh.15	Medical certificate of Jayaben by HJ Doshi Hospital
Exh.30	Note regarding handing over of deceased body
Exh.9	Examination certificate of Jayaben by Dr. Sandeep Maru
Exh.18	Examination certificate by Dr. R.C Badhiya
Exh.16	PM note
Exh.67	List of articles to FSL
Exh.68	Serology Report

8. The accused upon being questioned upon being Section 313 Cr.PC with regard to incriminating circumstances, made against him in the evidence rendered by the prosecution, which he has denied in toto and claimed that, he has been falsely implicated by the parents of the deceased, as, as per their custom, he had to pay agreed amount to the other side, at the time of marriage, which he could not pay to them, as a result, in order to extract said amount from him, he has been falsely implicated in the alleged incident. The accused despite of opportunity, did not led any evidence in his defense.

9. After hearing the parties and upon appreciation of the evidence, the trial court relying on the two dying declarations, came to a conclusion that, the deceased burnt alive by the accused and he was

the author of the crime. However, the learned trial court further held that,due to quarrel with the deceased wife, the accused lost self control due to sudden provocation and poured kerosene upon the deceased and thereafter, deceased was taken to the hospital by the husband and that conduct would show that, there was no intention of the accused to cause death of the deceased. In the result, the learned trial court, having regard to the facts and circumstances of the case, held guilty the accused of the offence under Section 304 Part II and acquitted from the charge under Section 302 IPC.

10. The appellant – sole accused, being aggrieved with the judgment of conviction and order of sentence, has preferred the appeal being Criminal Appeal No.946 of 2007, inter alia, stating that, the impugned judgment and order of conviction are unjust and improper and contrary to the evidence on record. Mr. P.M. Lakhani, learned counsel appearing for and on behalf of the appellant-accused while assailing the judgment of conviction and order of sentence, made the following submissions:

(a) That, the deceased herself committed suicide by pouring kerosene upon her and said facts being admitted by her before the treating doctor PW.4 – Dr. Ramesh Gadhiya who had treated the deceased on 16.02.2006 at about 8:30 p.m. at his private hospital at Amreli. The deceased had given history before the treating doctor, stating that, she sustained injuries due to quarrel between husband and wife. In the cross-examination, the treating doctor had admitted that, the deceased had given history to the effect that, she herself

poured kerosene. The said history was first in point of time and the said admission of the deceased has not been properly appreciated by the trial court while analyzing the credibility of the statements made before the Executive Magistrate and police. The said admission would clearly shows that, the dying declarations before the Magistrate and the police does not inspire confidence and same cannot be said to be a true and voluntary statement.

(b) That, even before the second doctor at Rajkot, the theory of suicide being disclosed and stated before the PW.1 – Dr. Sandeep Maru, who had treated the deceased at Doshi Hospital, Rajkot. In the cross-examination, the doctor has admitted that, during the treatment, the deceased has stated that, she herself poured kerosene which led to sustaining of the burn injuries. Thus, the subsequent statements before the Executive Magistrate and police create a doubt about the truthfulness and voluntary nature of dying declaration.

(c) That, the deceased sustained second and third degree burn injuries and according to medical evidence, her both the hands and fingers had severely burnt. The second dying declaration recorded by police (Exh.51) shows that, after recording of the statement, deceased made her right thumb impression at the bottom of the statement. Thus, it could not be possible for the deceased to make any endorsement with the right thumb and same has not been properly appreciated by the trial court while determining the credibility and reliability of two dying declarations.

(d) That, the injuries sustained by the accused in the said incident having not been explained by the prosecution. That, after the incident, he was arrested on 23.02.2007 and was produced before the Medical Officer, Civil Hospital, Amreli for his medical examination. PW.2 – Dr. Krishna Hariyani being a Medical Officer, after examination of the accused, found simple mark of burn injury on left wrist joint and same has been certified by issuing certificate at Exh.14. That, the prosecution failed to explain the said injuries found on the person of the accused which shows that, the genesis of the prosecution case has been materially suppressed and benefit of that suppression should be given to the accused.

(e) That, there is no evidence of illicit relationship. When prosecution alleges a specific motive, then, burden is on prosecution to prove it. In the present case, the allegation of maintaining extra marital affairs being alleged by the deceased in her two dying declarations and also disclosed it orally before her mother and father. That, the learned trial court to prove the said facts, relied on the testimony of PW.10 – Virjibhai Punabhai who has stated that, the accused Girish had an illicit relations with one lady belonging to Patel Community. The said witness on the aspect of illicit relationship, has not throw any light about her name, residence and other particular facts. Thus, merely making bald allegation either by the deceased or anyone, would not suffice to prove that the accused was having extra marital affair with someone. Thus, the motive behind the killing of the deceased is not established and on this count, in absence of clear motive to kill the deceased, the theory as

projected in two dying declaration killing the deceased by the accused cannot be admitted and read in evidence against the accused.

(f) That, the factum of oral dying declarations before the parents are not proved and reliable because the said statements being made before the parents who are highly interested witnesses and in absence of corroboration in their evidence, it cannot be relied upon. That, the learned trial court on the aspect of oral dying declarations, relied upon the testimonies of two witnesses namely PW.11 – Vijyaben Virjibhai and PW.10 – VirjibhaiPunabhai.. Both the witnesses are mother and father of the deceased. After receiving the message of the incident, they rushed to Amreli Hospital and thereafter, accompanied the deceased at Rajkot Hospital. They do not bother to lodge an FIR despite of having knowledge that, their daughter was burnt alive by the appellant-husband. The mother in her testimony admitted that,her daughter never called her husband as Girishbhai. This admission clearly indicative of the facts that, the factum of dying declaration with the name Dineshbhai dictated by the mother of the deceased and no woman would refer her husband as brother. In such circumstances, the theory involving the accused in the alleged incident as stated by two witnesses referred to above, are contrary to the evidence on record and their evidence to connect the accused in the offence, does not inspire confidence.

(g) That the dying declaration recorded by the Executive Magistrate PW:12 does not inspire confidence and the same is result of

tutoring, prompting by the parents of the deceased. In the declaration, generally, the wife would always refer her husband either in the name or as husband, but using name as Girishbhai (brother) by the deceased is unused and it cannot be accepted and thus, reasonable inference would arise that the parents who were present there have detected the dying declaration. The deceased herself at the first opportunity before the two treating doctors, disclosed that in an attempt to suicide, she poured kerosene herself. In such circumstances, the dying declaration recorded by the Executive Magistrate and police are not inconsistent with the oral statements of the deceased which raised suspicion about its truthfulness.

(h) That the second dying declaration in the nature of FIR Exh.51 recorded by PW:14, Mr. B.S. Pathan does not reflect the true facts of the incident as it was recorded after three days of the incident. The incident took place on 16.02.2007. The I.O. PW:14 was having knowledge about the occurrence of the incident and despite of this, he went at the Doshi Hospital, Rajkot on 20.02.2006 and recorded the statement of the deceased in the nature of FIR produced at Exh. 51. The manner in which it was recorded and disclosing the minutes details which running into two pages would itself create a suspicion about its truthfulness because having regard to the nature of burn injuries, it could not be possible for the deceased to disclose such kind of lengthy statement and that too, without the certificate of doctor whether she was in a fit state of mind to narrate the declaration. The explanation for delay in

examination of the victim deceased is not convincing and satisfactory. Thus, having regard to the history before the doctor given by the deceased, the declaration made subsequently before the police is inconsistent and cannot be said to be reliable and trustworthy.

11. Mr. Lakhani, learned counsel has submitted that the acquittal appeal filed by the State may not be entertained because the charge of murder as defined under Section 302 of Indian Penal Code is not proved and established. Admittedly, the deceased died after 12 days of the incident and cause of death was septicemia due to burn injuries and therefore, the prosecution failed to prove any of the four clauses of Section 300 which says that culpable homicide is murdered, if the act by which the death caused is done with the intention of causing death or with the intention of such bodily injuries as the accused knows to be likely to cause death or bodily injuries intended to be inflicted is sufficient in ordinary course to cause death or the act was so dangerous that it must in all probabilities cause death.

12. In such circumstances, referred to above, Mr. Lakhani submitted that prosecution has failed to prove its case beyond reasonable doubt as there is no legal evidence adduced by the prosecution to prove that the accused by pouring kerosene upon her wife deceased and thereafter, set her on fire and the defence theory about suicide committed by the deceased or its accidental death, seems to be more probable and acceptable and therefore, the findings of the

Trial Court that the death of the deceased would be a culpable homicide not amounting to murder and the offence falls under Exception 4 to Section 300 of the Indian Penal Code and therefore, the case would be under Section 304 Part-II of Indian Penal Code are contrary to law and against the weight of evidence and perverse.

Thus, Mr. Lakhani, learned counsel appearing for the appellant convict prays that there being merits in this appeal and the same may be allowed and he further prayed that the order of conviction and sentence be set aside and appellant may be acquitted of the charge of culpable homicide not amounting to murder.

13. On the other hand, Mr. L.B. Dabhi, learned Additional Public Prosecutor for the respondent – State, has vehemently opposed the appeal and contended that the Trial Court has not committed any error while relying on the two dying declaration of the deceased as the Trial Court was satisfied that the deceased was in a fit state of mind to narrate the correct facts of occurrence and also found that the same is truthful and voluntary. That, the dying declaration recorded by the Executive Magistrate as well as police does not have any infirmities and the theory of suicide as claimed by the appellant has been substantiated by the categorically statement made by the deceased that she was burnt alive by the appellant husband. So far as doctor's opinion is concerned, there is nothing on record to suggest that deceased made a declaration that she herself had committed suicide by pouring kerosene. If the history

would have disclosed by the deceased, then the doctors could have written in their records. The treating doctors failed to record the said history in their respective case papers as well as certificates. Thus, the oral opinion of the doctors in the cross-examination about the history given by the deceased would not prevail over the dying declaration recorded by the Magistrate as well as I.O.

In such circumstances, the State Counsel submitted that the findings of conviction recorded by the Trial Court are based on the evidence and in consonance with the settled law. Thus, therefore, it was submitted that no error, not to speaks of any error of law or on facts could be said to have been committed by the Court below in holding the accused appellant guilty of the offence and therefore, there being no merits in the appeal filed by the accused and the same may be dismissed.

14. So far as acquittal appeal filed by the State is concerned, it was submitted that the accused appellant held guilty for the offence of culpable homicide not amounting to murder, under Section 304 Part-II of the Indian Penal Code. In the present case, the deceased was set ablaze by the appellant and this act was not accidental or unintentional; and deceased died due to cardio respiratory failure and septicemia due to burn injuries. It is the case of the prosecution that the appellant poured kerosene on the deceased and set her on fire and therefore, by doing such act, he must have intended to cause death of the deceased and admittedly, there was no provocation by the deceased to the accused for pouring kerosene and set her on fire. In such circumstances, the act of pouring

kerosene by setting her on fire was so dangerous that it must in all probabilities caused death or such bodily injury is likely to cause death and therefore, the knowledge on the part of the accused would be imputed that the natural and probable consequences of an act would certainly be death. In that view of the matter, the learned Trial Court, without appreciating the facts and evidence on record, wrongly extended the benefit of exception 1 to Section 300 of the Indian Penal Code while coming to a conclusion that the act of the appellant is culpable homicide not amounting to murder punishable under Section 304 Part-II of the Indian Penal Code. Thus, it was submitted that the prosecution has successfully proved the charge of murder, as defined under Section 300 of the Indian Penal Code and the appellant may be held guilty for the offence of murder.

15. We have heard at length learned counsel for the parties and perused the case records and findings of conviction recorded by the Trial Court.

16. Before dealing with the rival contentions of the parties, it would be useful to analysis the evidence of the relevant witnesses.

(a) Dr. Rajesh Gadhiya (PW:4). The doctor is doing private practice at Town Amreli. On 16.02.2006, at about 08:30 p.m., the deceased Jayaben brought before him for a treatment. The deceased remained in the hospital for a day one and discharged on 17.02.2006. According to opinion of the doctor, after examination of the deceased, he found the burn injuries on the both legs, hands,

stomach and heart. The doctor referred the deceased for further treatment at higher center at Rajkot and according to his opinion, he found second and third degree of burn injuries. So far as history of the incident is concerned, the treating doctor in his cross-examination has stated that deceased told him that she sustained burn injuries due to quarrel took place between husband and wife. In the cross examination, the witness has stated further that the deceased gave a history that "I myself burnt by pouring kerosene". The witness has produced the certificate of statement at Exh.18.

(b) Dr. Sandip Maru (PW:1). On 17.02.2006, the deceased Jayaben was referred to the higher center at Rajkot Town by Dr. Rajesh Gadhiya (PW:4). The doctor being a medical officer of Doshi Hospital, Rajkot has stated that at about 02:40 p.m., the deceased brought before him with refer note and she was accompanied by one Dhaniben who had given history that "she sustained burn injuries by kerosene". The doctor has stated that the deceased was treated as indoor patient from 17.02.2006 to 28.02.2006. It was further stated that when deceased came into hospital, she was fully conscious and fit state of mind and was having 72 to 75% burn injuries on her body. The case papers including certificate being produced by the witness at Exh.9. In the cross examination, doctor has stated that the deceased told him that "kerosene has been poured and sustained burn injuries". In the cross examination, defence has tried to establish that at the relevant time, she was not fully conscious and mentally fit to narrate the facts of the incident, but against this,

nothing brought on record to establish that the deceased was not in a fit condition to record declaration.

(c) Dr. Jagdish Solanki (PW:3). On 28.02.2006, the witness being a medical officer attached with the Civil Hospital, Rajkot had conducted a postmortem with the penal Dr. J.J. Joshi. The witness in his testimony stated that during the postmortem, he found second and third degree burns injuries on the body of the deceased and according to his opinion, the cause of death was cardio respiratory failure and septicemia due to sever burn injuries. He has also produced P.M. note at Exh.16.

(d) Dr. Krishna Hariyani (PW:2). On 23.02.2006, when she was on duty with CHC, Bhagasara, the appellant accused Girish Saghathiya brought before her for medical examination. Upon examination of the accused, she found small burn injury marks on the left wrist joint on his body and after examination, she had issued a certificate Exh.14, mentioning the nature of injury which was simple in nature.

(e) Virjibhai Punabhai (PW:10). The witness is the father of the deceased Jayaben and during the course of investigation, his statement was recorded by the I.O. The witness in his deposition has stated that on the day of incident, they had gone to Village Gundala to attend after-death rituals and at that time, they received the message about the incident and immediately he along with his wife rushed to Amreli Hospital. The witness has further stated that at the hospital, her daughter was fully conscious despite having burn

injuries, she was fully conscious and mentally fit to narrate the incident and upon asking her about the incident, she told him that,

> *"in the morning, I was beaten up and had a fight with your son in law and thereafter, he went to Bagasara and thereafter, he came back at about 12:00 noon and when she had asked to take lunch, your brother in law replied that it is none of your business to ask him and thereafter, at about 03:00 o'clock, he started beating her and in defence, I have expressed desirous to leave the house, then he again beaten her and said that today, I want to kill you and will not permit to leave the house and abruptly pushed her into the coat and poured kerosene and set her on fire."*

The witness in his chief examination further stated that his daughter has also stated orally that the appellant had extramarital affairs with one girl belongs to Patel Community. The witness has further stated that after the incident, the accused fled away and neighbours after hearing the hue and cry, came to her rescue. The witness has further stated that before 15 days of the incident, his daughter deceased was at his home because of matrimonial dispute as the appellant was harassing her and on his assurance of keeping her well, the deceased went to her matrimonial home.

In the cross examination, the witness has denied that at his instance, the Executive Magistrate had recorded the statement of the deceased. The witness has clarified in details about non-filing of complaint by him. In the cross examination, the witness has admitted some of the facts, which he had not disclosed in the police statement, but so far as oral declaration involving the accused is concerned, there is no major contradiction or improvement found in his deposition.

(f) Vijyaben Virajibhai (PW:11). The witness is the mother of the deceased and after receiving the message of the incident, she along with her husband PW:10 rushed to Amreli Hospital where she was admitted in private hospital of Rajesh Gadhiya, PW:4. Before the witness, the deceased made a oral statement about the cause of incident and the act of the accused. In the chief examination, the witness has stated that the deceased at the relevant time was mentally fit to make a statement and upon inquiry, she had stated thus:

> *"in the morning, I was beaten up and had a fight with your son in law and thereafter, he went to Bagasara and thereafter, he came back at about 12:00 noon and when she had asked to take lunch, your brother in law replied that it is none of your business to ask him and thereafter, at about 03:00 o'clock, he started beating her and in defence, I have expressed desirous to leave the house, then he again beaten her and said that today, I want to kill you and will not permit to leave the house and abruptly pushed her into the coat and poured kerosene and set her on fire."*

In the cross examination, attack was made by the defence that at her instance, the police as well as Executive Magistrate recorded the statement. However, the witness has denied to the said suggestion and also denied to the facts that, her daughter had committed suicide.

(g) Milan Rajyaguru (PW:12). On 16.02.2016, the witness was posted as a Deputy Executive Magistrate at Amreli. He received the written

requisition from Amreli City Police *inter alia* stating to record the statement of the deceased Jayaben. At about 11:25 p.m., the witness went to the hospital of Rajesh Gadhiya (PW:4) at Amreli. In the opinion of the doctor, deceased was not conscious and in that view of the matter, the witness could not record the statement of the deceased. On the next day i.e. 17.02.2006 at about 10:30 a.m. the witness received a telephonic message that the deceased gained consciousness. On receiving the message, the witness immediately went to the hospital. The treating doctor opined that the deceased was in a fit state of mind to narrate the facts of the occurrence and after satisfied himself, he started to record the statement of the deceased. The statement was recorded in answer form. In the initial question about name, marital status, residence,etc. having been replied properly and mentioned in the statement Exh.38. On the question about how the incident occurred, deceased had disclosed that due to extramarital affairs of her husband, she was having verbal spat with her husband, as a result, her husband poured kerosene and set her on fire. On the question of time and place of the incident, the deceased replied that at about 03:00 p.m., at her matrimonial home Village Balapur, the incident has taken place. The deceased had also narrated that at the relevant time, except husband and wife, no one present at the home. It was stated by the deceased that she was brought at hospital by her husband. She has also claimed that she intends to get maintenance amount from her husband. The statement was recorded between 10:50 to 11:00 a.m. The witness after recording the statement, due to injuries on both the hands, took her right leg thumb impression at the footnote of the

statement. The statement Exh.38 shows that doctor has certified that patient was conscious and in a fit statement of mind to make declaration.

In the cross examination, the defence has tried to establish that at the instance of the family members of the deceased, the statement was recorded, but on the contrary, witness has denied to the suggestion that at the time of recording the statement, the mother was present and further clarified that no one present at the time of recording the statement. It is denied by the witness that declaration was not recorded in the exact words of the deceased. It is also denied that after disclosing the complaint, the dying declaration Exh.38, being later on, written on the line of the complaint.

(h) Bismillakhan S. Pathan (PW:14). On 17.02.2006, the witness was posted as a Deputy Police Superintendent at Amreli and due to the marriage span, he was entrusted to enquire the case. He took visit the place of incident on 19.02.2006 and recorded the statement of father of the appellant and called the FSL officer at the place. Meanwhile, witness came to know about the admission of the deceased at Rajkot Hospital. He went there and made a primary inquiry about the incident from the deceased and thereafter, her statement came to be recorded which later on, treated as FIR. In the FIR, the deceased made a detailed declaration about her marriage, matrimonial dispute with her husband and thereafter, she narrated the factum of compromise arrived at between the parties and also explained about the incident. She has also disclosed that on the day

of incident, how she was burnt alive by the appellant. She has also stated that on the day of incident, the parents of her husband went to Village Gondala for after-death rituals and no one present at the home. On the aspect of the incident, the deceased stated thus:

> *"my husband along with my son were at home and in the morning, my husband Girish was working as Diamond Polisher, had gone to Bagasara and returned back at about 12:00 noon, and without asking her, he had a lunch at home and again, went into the market, and went back at about 01:00 p.m., I asked Girish where did you go ? So he started fight with me and scolded me and beat her which she has resisted and told that if you beat me like this, I will not stay with you and I am going to my father's house. Girish got angry and said that I will not let you go now and I will kill. He took a cane, full of kerosene and pushed me on the bed in the house, poured kerosene and set me on fire and taking my son Mayur with him, he went out. I started burning and screaming and went out of the house through the porch and upon hearing the scream, the people around came and poured water on her and then she fainted and in a state of unconsciousness, he was brought at the Amreli and Rajkot Hospital and presently, I am undergoing treatment here. She has further stated that her husband had an affair with another woman."*

The witness PW:14 recorded the statement, in the exact words of the deceased and at the end she put her thumb impression of right hand and the statement in the nature of FIR at Exh.51 recorded at Rajkot Doshi Hospital.

In the cross examination, attempt was made to establish that the FIR came to be recorded at the instance of the parents and it

creates a doubt about its authenticity, truthfulness, as it was recorded after period of four days. However, why after delay of three days, the statement was recorded, the witness has explained the circumstances for delayed recording of the statement. The attempt was also made by the defence to show that the death was not homicidal, but it was accidental death and/or suicide. The witness has denied to the suggestion about the alleged suicide. On the contrary, it has come on record that the mother of the appellant accused was present while statement was recorded. Admittedly the said statement was not recorded either in the presence of doctor or with prior certification of mental fitness and consciousness.

(i) Lalitkumar Patel (PW:17). The witness was serving as Police Sub Inspector at Bagasara Police Station, Amreli Town and after registration of the offence, he was entrusted to investigate the case. During the course of investigation, I.O. had recorded the statement of the witnesses, drew the panchnama of the place of occurrence and collected the necessary samples for FSL, arrested the accused on 23.06.2006 and on completion of the investigation, let the chargesheet before the Jurisdictional Court. In the cross examination, the I.O. has admitted that, on the aspect of extramarital affairs, he did not find name of the woman and her address. He has also admitted that during the course of investigation, he did not have recorded the statement of treating doctor. He has denied to the suggestion that the deceased sustained burn injuries while preparing a tea on the stove. It has been denied by the witness that the statement of the deceased being recorded at the instance of parents of the deceased.

17. We have carefully examined the case records and findings recorded by the Trial Court. It may be seen that the entire case revolves around the evidentiary value of purported dying declaration at Exh.38 and Exh.51 recorded by the Executive Magistrate PW:12 and Police officer Pw:14. Before we advert to the actual admissibility and credibility of the said dying declaration, it will be beneficial to refer the case law on the evidentiary value of dying declaration. In **Sham Shankar Kankariya Vs. State of Maharashtra (2006 (13) SCC 165)**, while referring the decision in **Paniben Vs. State of Gujarat (1992 (2) SCC 474)**, the Supreme Court summed up the legal principles governing dying declaration, as follows:

> *"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*
>
> *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.*
>
> *(iii) This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.*
>
> *(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.*
>
> *(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.*
>
> *(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.*

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted."

18. In short, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to a conclusion that the dying declaration is true and reliable, has been recorded by a person at a time, when deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction and in such eventuality, no corroboration required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like Magistrate can be relied upon,

provided that there is no circumstance giving rise to any suspicion about its truthfulness.

19. The facts of this case are to be considered with the touchstone of the law which has been laid down by the Supreme Court, as referred above.

20. The appellant herein raised the contentions that the death of the deceased was not homicidal in nature as the prosecution failed to prove the said aspect by leading cogent evidence. The principal contention raised is that the burn injuries sustained due to accident, and/or it is a case of possible suicide by the deceased. The defence has heavily relied on the testimonies of two doctors, who have stated in the cross examination that the deceased herself committed a suicide by pouring kerosene on her. It is relevant to note that neither of the doctors have mentioned the said history alleged to have been disclosed by the deceased in the treatment case papers nor in the certificates of treatment. We have carefully examined Exh.9 and Exh.10 issued by Dr. Sandip Maru (PW:1). Deceased was admitted from 17.02.2006 to 28.02.2006 at Doshi Hospital at Rajkot. In the certificate as well as case papers, nothing being mentioned to the effect that the deceased gave a history about the suicide or accident. On the contrary, deceased in her statement recorded by the Executive Magistrate PW:12 and police PW:51 categorically had disclosed that she was burnt alive by the accused and the same has been corroborated by the testimonies of parents before whom she made oral declaration. Thus, so-called admission

of the two doctors about the oral statement in the form of history with respect to commission of the suicide, cannot be acceptable as truthful and reliable. It is relevant to note that at the first instance, the husband appellant had stated before the police that while preparing the tea, the deceased suffered burn injuries. In such circumstances, the theory of suicide or accident as claimed by the accused has not been established and having regard to the medical condition of the deceased and evidence of P.M. doctor (PW:3), the prosecution able to prove that the death of the deceased was homicidal in nature.

21. The next question falls for our consideration as to whether the two dying declarations (Exh.38 and Exh.51) can be held to be true and voluntary and can be relied upon to convict the appellant ?

22. We have carefully examined the contents of the oral dying declaration, disclosed before the parents PW:10 Virji Punabhai and PW:11 Vijyaben Virjibhai. It is well settled that, an oral dying declaration can be formed the basis of conviction, if the deponent is in fit condition to make the declaration and if it is found to be truthful. The Courts as a matter of prudence look for corroboration to oral dying declaration. The contents of oral dying declaration and the dying declarations recorded by the Executive Magistrate Exh. 38 and the police at Exh. 51 are consistent and reflect the plight of the deceased. The statement before the Magistrate corroborate to the oral dying declaration allegedly made before the parents and we do not found that the statement made on tutoring or prompting at the instance of parents. The details of oral as well as

written dying declaration being referred in para-16 (e), (f), (g) and (h) in this judgment and does not require to repeat the contents of declarations. So far as fit condition of the deponent to make the declaration and its truthfulness is concerned, we are satisfied that at relevant time the deceased was in a fit condition to make the statements. The reasons are that, from 16.02.2006 to 28.02.2006, the deceased was under observation of the doctors. The treating doctor PW-4, who had examined the deceased in a first point of time, had opined that at the time of recording the statement, the deceased was in a fit state of mind and was fully conscious. The endorsement of said doctor would further established that on 17.02.2006 when the Executive Magistrate has recorded the statement, she was conscious and fit state of mind to understand the question asked to her. The Executive Magistrate PW-12 himself satisfied about the mental condition of the deceased. The second declaration was recorded by the Dy.S.P, PW-14, who also opined that the deceased was mentally fit and conscious. In such circumstances, we have no doubt in our mind that, at relevant time the deceased was conscious and mentally fit to disclose and narrate the factum of incident. The first dying declaration Exh. 38 was recorded at the earliest opportunity. The Executive Magistrate being a neutral person has no any agenda or motive to falsely involve the appellant accused and has no any grudge or enmity against him. The second dying declaration in the form of FIR recorded by the police, wherein also, the deceased disclosed a detailed version of the incident. The second dying declaration recorded after 4 days of the first dying declaration. The officer who

had recorded the declaration explained about the delay in recording the statement. At the time of recording second dying declaration, the deceased was admitted in the Trust hospital at Rajkot. The incident took place at the village: Balapur, Bagasara, Town : Amreli and distance between the two places i.e. Rajkot hospital and Amreli would be 200 Kms. and more. It is explained by the Dy.S.P. PW-14 that, on 17.02.2006, he was entrusted the enquiry and took visit the place of incident on 19.02.2006 and learnt that the deceased was admitted at Rajkot and thereafter, he went to Rajkot on 20.02.2006. In such circumstances, the delay of 4 days in recording the statement satisfactorily explained and there is no circumstances exist to create a doubt about its authenticity and truthfulness. It is settled position of law that the statement in the form of FIR lodged by the deceased can be used as a dying declaration and in the present case, same is being corroborated by the first dying declaration recorded by the Executive Magistrate and the oral declarations made before the parents. Upon scrutiny of the testimonies of the parents, we do not find anything that the parents have played a major role in recording the statements. On the contrary, the presence of mother of accused throughout the hospital comes on record. Thus, the deceased in a fit mental state of mind, voluntarily made a statement about the true facts of the incident and how she was burnt by the appellant. We do not find anything on record that the statements being disclosed by any motive or vengeance. Thus, upon examination of the oral as well as written dying declarations, we do not find any infirmities or inconsistencies or any suspicious circumstances to discard the

statements of the deceased and the dying declarations as referred above were not result of tutoring, prompting or production of imagination and we are satisfied that the declarations as referred does inspire confidence and reflect the true affairs of the incident. In such circumstances, it is proved and established that on 16.02.2006 at about 03:00 p.m., the deceased Jayaben wife of the appellant, after verbal spat with the accused, the accused poured kerosene and set her on fire and it is the accused who has caused the death of the deceased.

23. In the aforementioned reasons and discussion, we do not find any merits in the contentions raised by the appellant, challenging his conviction recorded by the trial Court. Resultantly, the conviction appeal filed by the accused being Criminal Appeal No. 946 of 2007 having no any merits.

24. So far as acquittal appeal filed by the State being Criminal Appeal No.527 of 2008) is concerned, it is the contention of the State that, the trial Court has committed a grave error while extending the benefit of exception 1 to Section 300 of the Indian Penal Code and convicted and sentenced the appellant accused under Section 304 Part-II of the Indian Penal Code.

25. On the other hand, Mr. Lakhani, learned advocate appearing for the appellant submitted that, due to provocation by the deceased the incident was being occurred, without premeditation, in a sudden fight in the heat of passion upon sudden quarrel. That the appellant accused after the incident, took the deceased at the hospital and had

also sustained burn injuries which indicative of the fact that, there was no intention on his part to kill the deceased. The second contention raised about the septicemia as after 12 days of the incident, the infection developed on the body of the deceased, which was one of the factor for deterioration of the her health. Thus, the view taken by learned trial Court is a possible and plausible one and it shall not be replaced by this Court and the acquittal appeal may not be entertained.

26. In the present case, the learned trial Court has recorded that the appellant has caused death of his wife by burning and after the incident, the deceased was taken by the appellant at Amreli Hospital for treatment, which conduct clearly shows that the accused was not having any intention to kill the deceased but the knowledge can be attributed that the burn injury is likely to cause death and therefore, the act of the accused would fall under Section 304 Part-II of the Indian Penal Code.

27. Before proceeding to rival submissions, we would like to place on record, the scope of interference in an appeal against acquittal and when the same is justified. It is settled position of law that, in exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal and at that time, the Appellate court shall bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence and therefore, the interference in a routine manner, where the other view is possible, should be

avoided unless there are good reason for interference. In **Govind Raju Vs. State, (2012) 2 SCC (Cri.) 533**, the Supreme Court, has observed that, interference with the acquittal appeal is justified only when there is element of perversity traceable from the findings recorded by the lower court in the appreciation of evidence.

28. Applying the aforesaid law to the facts of the present case on hand and on evaluation of both the dying declarations independently, it is evident that, the deceased after incident, came out from her house and the persons of the vicinity came to rescue her because after setting her fire by the accused – appellant, he fled away along with the minor child from the place. There was second to third degree burn injuries found on the body of the deceased. We have carefully examined the conduct of the accused. He fled away after the incident and came later on after sometime and during this period, the deceased severely suffered burn injuries. Thus, the conduct would show otherwise, and legitimate inference would be raised is that, the act of pouting kerosene was done with an intention of causing death and same was intended to be done as, as per the medical evidence, the injuries were sufficient in ordinary course to cause death. The pouring kerosene and setting the person on fire, the presumption would be that the person who did the act knows the probable reason of his conduct and the act was so imminently dangerous that it must in all probability, caused death or such bodily injuries likely to cause death. In the facts of the present case, there is no evidence to the effect that deceased had given a provocation which led the deprivation of the accused's

power of self control. On the contrary, at the time of incident, the accused slapped twice the deceased and when she proposed to leave the house, the accused did not permit her and alleged that, he will kill her and thereafter, he took the cane of kerosene and after pushing her on the bed, he poured the kerosene on her. So on the facts, the exception 1 to Section 300 has no application at all and to that extent the findings of the trial Court seems to be arbitrary, non-application of mind and perverse.

So far as the applicability of exception 4 of Section 300 is concerned, the act of the accused cannot be said to be without premeditation, in sudden fight in a heat of passion, upon sudden quarrel and without taking undue advantage or acted in a cruel manner. Thus, on the factual aspect as well as legal, the case of the accused would not fall any of the exception to Section 300 of the Indian Penal Code. The learned trial Court without assigning sound reason on this aspect, straightway extending the benefit of exception, which is in our opinion against the settled principle of law and evidence on record. It is relevant to note that, except taking the deceased at the hospital, nothing further shown positively by the accused that he had tried his level best to save the deceased. Even the accused would have tried to save her, then also, it would not bring down the offence from murder to culpable homicide not amounting to murder. It is in this context, it is beneficial to refer and rely the case of **Santosh Vs. State of Maharashtra, (2015) 7 SCC 641**. In the referred case, the Supreme Court held and observed that, after pouring kerosene on

the deceased and setting her ablaze, and thereafter merely because the accused tried to extinguish the fire will not take the case out of clutches of Section 300 of Indian Penal Code, as the act was so imminently dangerous which in all probability will cause death. The relevant part Paras 9 to 18 read thus

> *"9. Insofar as the first contention that the appellant is not responsible for the death of deceased Saraswatibai, the defence made an attempt to contend that the fire was accidental and that the appellant tried to extinguish the fire in order to save her and in that process, he also suffered burn injuries. The prosecution has adduced cogent evidence to prove that the appellant has caused the death of deceased Saraswatibai. The accused suspected the deceased of infidelity and picking up a fight over it, he kicked her and inflicted fist-blows and further set her on fire by pouring kerosene over her person. PW 6, doctor certified that the deceased was in a fit mental condition to make the statement and PW 7, the Executive Magistrate recorded the dying declaration Ext. 1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the appellant poured kerosene over her person and set her on fire. That accused poured kerosene on the deceased and set her on fire is corroborated by the oral testimony of PW 3, Sindhu Sunil Ingole (sister-in-law) of the deceased. PW 1 Raju Janrao Gavai, neighbour of the deceased who accompanied the deceased to the hospital to whom the deceased is said to have made a statement about the overt act of the accused, had only stated that the deceased told him that the accused beat her and also kicked her. PW 1 had not supported the statement of the deceased in the dying declaration that the accused poured kerosene on her and set her on fire. However, the prosecution has established the guilt of the accused by Ext. 1 dying declaration and the oral*

evidence of the mother (PW 2) and the sister-in-law (PW 3) and the same cannot be doubted.

10. The learned counsel for the appellant contended that there was no premeditation and the appellant had poured kerosene from the lamp nearby and thereafter the appellant attempted to extinguish the fire by pouring water on her and himself getting burn injuries in the process. It was submitted that the conduct of the appellant in trying to extinguish the fire immediately after the incident would clearly show that there was no intention on the part of the appellant to commit the murder. In support of his contention, he placed reliance on the judgment of this Court in Kalu Ram v. State of Rajasthan.

11. The question falling for consideration is whether the act of the accused pouring water would mitigate the offence of murder. Where the intention to kill is present, the act amounts to murder, where such an intention is absent, the act amounts to culpable homicide not amounting to murder. To determine whether the offender had the intention or not, each case must be decided on its facts and circumstances. From the facts and circumstances of the instant case, it is evident that : (i) there was a homicide, namely, the death of Saraswatibai; (ii) the deceased was set ablaze by the appellant and this act was not accidental or unintentional; and (iii) the post-morterm certificate revealed that the deceased died due to shock and septicaemia caused by 60% burn injuries. When the accused poured kerosene on the deceased from the kerosene lamp and also threw the lighted matchstick on the deceased to set her on fire, he must have intended to cause the death of the deceased. As seen from the evidence of PW 5, panch witness, in the house of the appellant, kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene was poured from the kerosene lamp or from the can is of no

consequence. When there is clear evidence as to the act of the accused to set the deceased on fire, absence of premeditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

12. After attending to nature's call, the deceased returned to the house a little late. The accused questioned her as to why she was coming late and he also suspected her fidelity. There was no provocation for the accused to pour kerosene and set her on fire. The act of pouring kerosene, though on the spur of the moment, the same was followed by lighting a matchstick and throwing it on the deceased and thereby setting her ablaze. Both the acts are intimately connected with each other and resulted in causing the death of the deceased and the act of the accused is punishable for murder.

13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death.

14. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in Kalu Ram case [(2000) 10 SCC 324 : 2000 SCC (Cri) 86], it was contended that such conduct of the accused would bring down the offence from murder to culpable homicide not amounting to murder. In Kalu Ram case [(2000) 10 SCC 324 : 2000

SCC (Cri) 86] , the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do as demanded. Infuriated by the fact that his wife had failed to concede to his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realised that the fire was flaring up, he threw water on her person in a desperate bid to save her. In such facts and circumstances, this Court held that the accused would not have intended to inflict the injuries which she sustained on account of the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

15. The decision in Kalu Ram case [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated on a par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred.

16. Within three months of her marriage, the deceased died of burn injuries. In bride burning cases, whenever the guilt of the accused is brought home beyond reasonable doubt, it is the duty of the court to deal with it sternly and award the maximum penalty prescribed

by the law in order that it may operate as a deterrence to other persons from committing such offence.

17. This Court on various occasions has stressed the need for vigilance in cases where a woman dies of burn injuries within a short span of her marriage and that stern view needs to be adopted in all such cases. In Satya Narayan Tiwari v. State of U.P. [(2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393] , this Court in paras 3 and 9 has held as under : (SCC pp. 692 & 693)

> *"3. Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner- What has our society become-this is illustrated by this case.*
>
> ***
>
> *9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialization of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand."*

> *18. Upon analysis of the evidence adduced by the prosecution, the courts below recorded concurrent findings that the accused caused the death of deceased Saraswatibai and convicted the appellant. It is well settled that concurrent findings of fact cannot be interfered with unless the findings are perverse and unsupportable from the evidence on record. This view has been reiterated in Dhananjay Shanker Shetty v. State of Maharashtra [(2002) 6 SCC 596 : 2002 SCC (Cri) 1444] . In the totality of the facts and circumstances, in our view, the concurrent findings of facts recorded by the courts below are based on evidence and we see no infirmity in the impugned judgment warranting interference". Therefore, after pouring kerosene on the deceased and thereafter setting her ablaze, thereafter merely because the accused might have tried to extinguish the fire will not take the case out of the clutches of clause fourthly of Section 300 of the IPC. The act of the accused pouring kerosene on the deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court has rightly convicted the accused for the offence under Section 302 IPC.*

29. In the case on hand, as discussed, the appellant accused after pouring the kerosene and set the deceased on fire, fled away and returned back after considerable time and in absence of any provocation on the part of the deceased, the conduct of the accused shows premeditated mind to kill her and in absence of any sudden fight, the act by which the death was caused, should not fall in any exception to Section 300 and therefore, the evidence on record clearly proved beyond doubt that the appellant is guilty of the offence of culpable homicide amounting to murder and is not

entitled to benefit of any exceptions of Section 300 as the act of the accused would fall under clause thirdly and fourthly of Section 300.

30. It was the contention that the main cause of death of the deceased was septicemia and during 12 days the injuries aggravated and she died due to infection in the form of septicemia. We are not agree with the submission that the deceased was died mainly on the ground of septicemia. Dr. Jignesh Solanki (PW-3) while conducting the PM report, observed that, there was first to third degree of burn injuries on the body of the deceased and according to his opinion, the cause of death was cardio respiratory failure and septicemia due to burn injuries. In the medical language, septicemia is the systematic illness caused by the spread of microbes or their toxins via the bloodstream and it has been caused blood poisoning, infection resulting from the presence of bacteria in the blood. In our opinion that the septicemia was the direct result of blood injuries and the same was not the primary cause because the death was due to burn injuries and the injuries were sufficient in ordinary course to cause death. It will be beneficiary to refer the case of **State of Haryana Vs. Pala and others** reported in **1996 (8) SCC 51**, the issue before the Supreme Court was about the difference between primary effect of injuries and the secondary effect of injuries. The facts of the case was to the effect that deceased was hit on his head three times and when the deceased had fallen, the other accused has beaten him thrice on his chest and abdomen. The deceased was taken to the hospital. He died several

days later while in the hospital. The doctor's opinion about the cause of death was "due to septicemia' which resulted as a result of head injury and was sufficient to cause death in ordinary course of nature. The argument advanced by the defense that the offence committed would not fall under any of the limbs of Section 300. The trial Court convicted the accused applying clause 3 of Section 300 under Section 302 of the Indian Penal Code. On appeal, the High Court applied exception 4 to Section 300 Indian Penal Code and altered the offence of murder into culpable homicide not amounting to murder. In the further appeal to the Supreme Court, in para-3 of the judgment, the supreme Court has held as under:

> *"On the other hand he contended that when death was due to septicasemie, it cannot be referable to the cause of the death in the ordinary course of nature due to anti mortom injuries and that, therefore, the offence of murder has not been made out. In support thereof, he sought to place reliance on Lyon's Medical Jurisprudence for India (Tenth Edition) at page 222. It is stated therein that "Danger to life depends, primarily, on the amount of hemorrhage, on the organ wounded, and on the extent of shock; secondarily, on secondary hemorrhage, on the occurrence of septicaemia, erysipelas, tetanus, or other complications. In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury : Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration." Though the learned counsel had not read the later part of the opinion, the medical evidence on record do clearly establish that Septicaemia is not the primary cause and the death was due to injuries caused to the deceased and they are sufficient to cause death in the ordinary course of*

nature. Septicaemia would, therefore, not be taken into account."

31. In view of the reasons and discussions made hereinabove, the prosecution has successfully proved and established beyond reasonable doubt the charge of committing murder of the deceased under Section 300 of the Indian Penal Code and to that extent, the acquittal appeal preferred by the State is allowed. The conviction and sentence under Section 304, Part-II of Indian Penal Code is not sustainable in law and set aside. The appellant herein is convicted for the charge of murder as defined under Section 300 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life. The conviction under Section 498A stands confirmed. The fine amount with default sentence awarded is maintained. The sentences for both the offences shall run concurrently and period of imprisonment suffered so far, if any, shall be given a set off under Section 428. It is reported that, the appellant is on bail. The bail bond stands cancelled. The trial Court shall take necessary steps to secure the accused to undergo the remaining period of sentence.

32. Accordingly, the acquittal appeal filed by the State being Criminal Appeal No. 527 of 2008 stands allowed in aforesaid terms. The conviction appeal filed by the appellant being Criminal Appeal No. 946 of 2007 stands dismissed. In view of the allowing of the acquittal appeal, the enhancement appeal being Criminal Appeal No. 1130 of 2007 does not survive and is disposed of accordingly

33. The registry shall forward the entire case records immediately to the concerned court. The copy of this judgment and order be supplied to the accused free of cost.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 03/09/2025 14:33:42