

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 224 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
JAMNABAI MOHANBHAI RUPABHAI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PM VYAS for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

Date of decision: 31/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant challenges the judgement and order dated 23.2.1998 passed by the learned Additional Principal Judge, Court No.2 of the City Sessions Court, Ahmedabad, in Sessions Case No. 238/97, by which the appellant was convicted for the offence under Section 302

of the IPC and sentenced to undergo rigorous imprisonment for life and pay fine of Rs.500, in default to undergo simple imprisonment for one month.

2. The prosecution version is that the mother-in-law of deceased Hansaben used to quarrel with her and on 12.6.97 at about 8'O Clock in the evening, she poured kerosene on her and set her ablaze by lighting a match-stick, as a result of which Hansa died on 16.6.1997.

3. The trial Court relying upon the dying declaration of the deceased and the medical evidence, held that the prosecution had established the guilt of the accused.

4. The record and proceedings of the case are before us. The learned Counsel for the appellant has taken us through the relevant material on record. It was vehemently argued by him that the prosecution had not examined Radha Kanjibai Bhil, who was said to be an eye-witness in the dying declarations of the deceased. It was further argued that it was not possible that the appellant who was an elderly woman would be able to commit such a crime on the deceased, who was a young lady of 25 years of age. It was also argued that there were four or five match-sticks found near the scene of offence and from that fact, an adverse inference should be drawn. It was contended that if it took the appellant to light four or five match-sticks to set Hansaben on fire, by that time she would have run away from the scene.

5. We have gone through the entire evidence on record and we find that Hansaben had of her free will, given the dying declaration Ex.8, while she was fully conscious. In fact, she lived upto 16.6.1997 when she succumbed to the burns sustained by her. The Executive Magistrate Jagdish Sundarlal Parmar has deposed at Ex.6 that he was satisfied himself as well as from the medical opinion that Hansaben was fully conscious and in a position to give her dying declaration. He has said that he had recorded the answers to the questions put by him, in her own language. This is clear from the dying declaration Ex.8. In the said dying declaration Hansaben clearly stated that her mother-in-law was jealous of her and was harassing her. She has also stated that the incident took place in the evening at 8'O Clock on the "otla" of her house where her mother-in-law Jamnaben had set her ablaze. There is an endorsement on the dying declaration duly proved by the Executive Magistrate to

the effect that Hansa was conscious. There is also an endorsement showing that the doctor was present and none of the relatives of the patient or any Police person was present there. We are fully satisfied from the said dying declaration and the deposition of the Executive Magistrate Jagdish Parmar that the dying declaration was recorded when Hansaben was in her full senses and there has not been any irregularity or impropriety, in taking down the dying declaration. The dying declaration clearly discloses that Hansaben was set ablaze by her mother-in-law i.e. the appellant Jamnabai.

There is also the evidence of Dr. Bharat Dave at Ex.9 which shows that he had taken down the history when Hansa was brought to the hospital on 13.6.1997 at mid-night and as per that history written by him in the case papers, she had stated that she was set ablaze by her mother-in-law by pouring kerosene on her. The medical evidence clearly shows that her death was caused due to burns. In the injury certificate which is at Ex.10, there is clear mention of the fact that smell of kerosene was coming from the scalp of Hansa. Other burn injuries are mentioned in detail showing that the total burns were 75 per cent. The case paper Ex.11 shows that the history given by the patient herself was to the effect that her mother-in-law had poured kerosene on her and set her ablaze. In the FIR Ex.32 which became dying declaration since the informant died, the same story is given in greater details by Hansa. Her father Jivanji has deposed at Ex.12 that when he met her in the hospital and asked her as to what had happened, she had told him that her mother-in-law had poured kerosene on her and set her ablaze. She had also told him that quarrels were going on since three days. The report of the Scientific Officer of the FSL which is at Ex.17 shows that on the pieces of cloth which were forwarded at mark "B", kerosene hydro-carbons were found.

6. On going through the material on record, we are fully satisfied that the prosecution has been able to establish that the appellant had committed the crime by setting her daughter-in-law ablaze by pouring kerosene on her on 12.6.1997. We fully agree with the reasoning adopted by the trial Court for reaching its conclusion and find that there is absolutely no reason to interfere with the impugned decision. The appeal is therefore, summarily rejected.

\* /Mohandas