

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 531 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE J.M.PANCHAL****HONOURABLE MR.JUSTICE J.R.VORA**

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

Whether this case involves a substantial
question of law as to the interpretation
4 of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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BHIKHABHAI JENABHAI
Versus
STATE OF GUJARAT & ANR

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Appearance :

MR US BRAHMBHATT for Appellant
MR RC KODEKAR APP for Respondent No.1

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and

HONOURABLE MR.JUSTICE J.R.VORA

Date : 28/02/2006

ORAL JUDGMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1 Instant Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973 is directed against judgment dated April 21, 1997 rendered by the learned Additional Sessions Judge, Mirzapur, Ahmedabad, in Sessions Case No. 185/1995 by which the appellant is convicted for commission of offence punishable under Section 302 IPC and sentenced to suffer RI for life and fine of Rs. 5,000/- in default RI for two and half years.

2 The facts emerging from the record of the case are as under :

Ms. Suriben Kanubhai Prajapati, who was daughter of Ranchhodbhai Somabhai Prajapati, a resident of village Zindva, was married to Kanubhai Bhikhabhai. After marriage, Ms. Suriben was staying in Sector 24, Gandhinagar, with her husband Kanubhai. During the subsistence of her marriage with her husband, Ms. Suriben gave birth to a boy named Gunjan. It may be stated that Kanubhai was dealing in bricks and maintaining his family. The incident in question took place on July 9, 1995. About eight months prior to the day of incident, Kanubhai with his wife Suriben came to village Sadra to reside with his father. Thus, Ms. Suriben with her

husband as well as son and her father-in-law was staying at village Sadra, Taluka Dehgam, District Ahmedabad. On the day of incident, at about 8.00 a.m. in the morning, Ms. Suriben was preparing tea on a hearth for the cooking, whereas her husband was shaving the beard at outer portion of the house. Near the hearth, there was a tin containing kerosene. The appellant who is father-in-law of the deceased, all of a sudden entered the kitchen and asked Ms. Suriben as to why she was preparing the tea. So saying, the appellant poured kerosene over the hearth, as well as near the place where Ms. Suriben was sitting while preparing the tea and also over her. Because of this, a blaze took place which engulfed the deceased. Kanubhai who was husband of the deceased tried to extinguish fire caught by his wife. As Ms. Suriben had sustained burn injuries, Nathabhai Manchhabhai, who is brother of the appellant, removed the injured to Gandhinagar Hospital for treatment. From Gandhinagar Hospital, injured Suriben was referred to Civil Hospital, Ahmedabad for better treatment. From Gandhinagar Police Control Room, a message was flashed at Civil Hospital, Ahmedabad, that Mrs. Suriben, wife of Kanubhai Bhikhabhai, who had sustained burn injuries and Mr. Kanubhai who had also sustained injuries while

rescuing Suriben, were transferred to Civil Hospital, Ahmedabad for treatment. At Civil Hospital, Ahmedabad, First Grade Jamadar Bhikhusinh Shivuji of Shahibaugh Police Station was on duty. He recorded the First Information Report of injured Suriben as narrated by her. After recording First Information Report, as narrated by injured Ms.Suriben, he sent a yadi to the Executive Magistrate, Ahmedabad City Area, to come to Ward No. E/13 of Civil Hospital for the purpose of recording of Dying Declaration of injured Suriben. The yadi was bearing an endorsement made by the Doctor to the effect that the patient was conscious. On receipt of yadi, the Executive Magistrate Mr. Jagdishbhai Sundarlal Varma went to Ward No. E/3 of Civil Hospital, Ahmedabad, where the injured Suriben was being treated. Mr. Varma recorded the dying declaration of the deceased as narrated by her. During the course of treatment, Ms. Suriben succumbed to her burn injuries. Therefore, inquest on the dead body of the deceased was held and necessary arrangement was made to send dead body for postmortem examination. The postmortem examination on the dead body of the deceased was conducted by Dr. Pratik Ravjibhai Patel. The Investigating Officer drew panchnama of place of incident and seized incriminating articles. During the course of

investigation, the appellant was arrested. The incriminating articles were sent to Forensic Science Laboratory for analysis. On completion of investigation, the appellant was chargesheeted in the court of learned Judicial Magistrate, First Class, Dehgam for commission of offence punishable under Section-302 IPC. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Mirzapur, Ahmedabad, for trial, where it was numbered as Sessions Case No. 185/95.

3 The learned Additional Sessions Judge, Mirzapur, Ahmedabad, to whom the case was made over for trial, framed necessary charge against the appellant at Exhibit-4. It was read over and explained to him. He pleaded not guilty of the same and claimed to be tried. The prosecution, therefore, examined:(1)Panch Karimbhai Rasulbhai, as PW-1 at Exh.-6;(2) Panch Jagadishkumar Manilal Patel, as PW-2 at Exh.8; (3)Scientific Officer, Rajeshkumar Rameshchand Mehta, as PW-3 at Exh.-13; (4)Investigating Officer Panchabhai Bhagwanbhai Patel, as PW-4 at Exh.-15; (5)Nathabhai Manchhabhai as PW-5 at Exh.16; (6)Kanubhai Bhikhabhai as PW-6 at Exh.-17; (7)Dr. Pratik Ravjibhai Patel as PW-7 at Exh.-18; (8)Executive

Magistrate Jagadishbhai Sundarlal Varma, as PW-9 at Exh-21; and (9) Investigating Officer PSI Panchabhai Bhagwanbhai Patel as PW-10 at Exh.-26, to prove its case against the appellant. The prosecution also produced documentary evidence such as panchnama of place of incident at Exh.7; panchnama of seizure of tin containing kerosene and burnt rags, etc. at Exh.9; the panchnama of person of the appellant at Exh.10; inquest report of the deceased at Exh.11; the report of Mr. Mehta who was then Scientific Officer at Exh.14; postmortem notes of the deceased Suriben at Exh.19, dying declaration of the deceased recorded by Executive Magistrate Mr. Varma at Exh.22; yadi sent to the Executive Magistrate to come to the hospital to record dying declaration of Suriben at Exh. 23; complaint of Suriben at Exh.27, etc. in support of its case against the appellant.

4 After recording of evidence of prosecution witnesses was over, the learned Judge of the Trial Court explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the case of the appellant was that his

son Kanubhai had set the deceased on fire and a false case was foisted upon him. However, he did not lead any evidence in support of the defence pleaded by him in his further statement.

5 On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Suriben died a homicidal death. The learned Judge noticed two dying declarations produced by the prosecution at Exhibits 22 and 27 and held that the deceased had made those dying declarations while she was in a fit state of mind. On the basis of those two dying declarations, the learned Judge concluded that it was proved by the prosecution beyond reasonable doubt that when the deceased was preparing tea in the morning of July 09, 1994, the appellant poured kerosene over her and set her ablaze, as a result of which, she died and, therefore, the appellant was liable to be convicted for the commission of offence punishable under Section 302 IPC. In view of aboveresferredto conclusions, learned Judge has convicted the appellant for commission of the offence punishable under Section 302 of the IPC and imposed sentences referred to earlier by judgment dated

April 21, 1997, giving rise to instant appeal.

6 Mr. U.S. Brahmhatt, learned counsel of the appellant, contended that the dying declarations produced by the prosecution should not be relied upon inasmuch as at the time when the dying declarations were stated to have been recorded, the deceased was unable to make any statement. According to the learned counsel, the evidence on record does not indicate that the deceased was in a fit state of health to make declarations and, therefore, the dying declarations should not be made basis for convicting the appellant under Section 302 IPC. It was argued that dying declaration recorded by the Executive Magistrate and produced by the prosecution is allegedly signed by the deceased as "Suriben Kanulal Prajapati, Sadra" whereas the complaint of the deceased which is also treated as dying declaration of the deceased is signed as "Suriben @ Sharmistha Kanubhai Prajapati" and as signatures appended on the two dying declarations do not tally with each other, the unwarranted conviction of the appellant under Section 302 IPC based on the two dying declarations should be set aside. It was argued that the postmortem notes indicate that hospital bandage was present on the affected parts of the dead body when

dead body was brought for postmortem examination before the Doctor P.S. Patel and as the deceased could not have signed the so called two dying declarations, the appellant should be acquitted. The learned counsel emphasized that the evidence on record is not appreciated by learned Judge of the Trial Court in its true perspective and, therefore, the appeal should be allowed.

7 Mr.R.C. Kodekar, learned additional Public Prosecutor argued that the Executive Magistrate who had recorded dying declaration of the deceased was satisfied that the deceased was in a fit state of mind to make the dying declaration and, therefore, the evidentiary value of the dying declaration recorded by the Executive Magistrate does not stand diminished at all. According to the learned counsel of the State Government, below the dying declaration recorded by the Executive Magistrate, the deceased had signed as "Suriben Kanulal Prajapati Sadra, whereas complaint bears signature of the deceased as "Suriben @ Sharmistha Kanubhai Prajapati" and as there is no change in hand-writing pattern at all, it is not correct to say that there is difference in signature appended on two dying declarations and, therefore, they

should be disbelieved. The learned Counsel emphasized that the record does not indicate that at the time when dying declaration of the deceased was recorded by the Executive Magistrate Mr. Varma, the hospital bandage was applied on the deceased nor the record indicates that hospital bandage was applied on the hand of the deceased when she had lodged complaint and, therefore, the plea that deceased could not have signed the two dying declarations as hospital bandage was applied on her hand, should not be accepted by the court. The learned counsel asserted that the learned Judge of the Trial Court has assigned cogent and convincing reasons for convicting the appellant under Section 302 IPC and as learned Counsel of the appellant has failed to dislodge those weighty reasons, the appeal which lacks merits, should be dismissed.

8 This Court has heard Mr.U.S. Brahmhatt, learned counsel of the appellant and Mr. R.C. Kodekar, learned APP for the State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

9 As noticed earlier, the prosecution has not produced direct evidence to establish guilt of the appellant and has relied upon two dying declarations allegedly made by the deceased. Before appreciating the evidence of the witnesses, who have deposed before the court for proving the dying declarations and the contents of the dying declarations, it would be relevant to notice the law relating to dying declaration. Section 32(1) of the Indian Evidence Act, 1872 is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not credit-worthy. Under Section 32 when a statement is made by a person as to the cause of death or as to any of the circumstances, which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. It is well settled that conviction can be based on the dying declaration itself provided it is satisfactory and reliable. A dying

declaration made by a person on the verge of his death has a special sanctity, as at that solemn moment, a person is most unlikely to make any untrue statement. The sanctity attached to dying declaration is that a person on the verge of death would not commit sin of implicating somebody falsely. The shadow of impending death is by itself the guarantee of truth of the statement made by the deceased regarding cause of circumstances leading to his death. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the person is at the point of death and when every hope of this world is gone. At that point of time every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Such a solemn situation is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. A dying declaration, therefore, enjoys almost a sacrosanct status as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Court, it becomes very important and reliable piece of evidence and if the Court is

satisfied that the dying declaration is true and free from any embellishment such a dying declaration by itself can be sufficient for recording conviction even without looking for any corroboration. However, if there are any infirmities of such nature warranting further assurance then the Court has to look for corroboration. The rule of corroboration requires that the dying declaration be subjected to close scrutiny since the evidence is untested by cross-examination. The declaration must be accepted, unless such declaration can be shown not to have been made in expectation of death or to be otherwise unreliable. Any evidence adduced for this purpose can only detract from its value, but does not affect its admissibility. It is also well settled that it is not necessary that recording of dying declaration should be in the form of question and answer. One of the important tests of reliability of dying declaration is that the person who recorded it must be satisfied that the deceased was in a fit state of mind. Generally, the following three tests have been devised in judicial pronouncements in order to answer the question whether the dying declaration is true :-

- (i) Was the victim in a position to identify the

assailant/s?

- (ii) Whether the version narrated by the victim is intrinsically sound and accords with probabilities?
- (iii) Whether any material part is proved to be false by other reliable evidence?

In the light of above stated principles, this Court will have to consider the dying declarations, which are produced on record of the case by the prosecution and ascertain the truth with reference to those dying declarations made by the deceased.

10 The first dying declaration which is sought to be relied upon by the prosecution is dying declaration which was recorded by the Executive Magistrate Mr. J.S. Varma. Mr. Varma is examined by the prosecution at Exh. 21. He has stated in his testimony that on July 09, 1995, he had received a yadi from First Grade Jamadar posted at Civil Hospital that he should come to Ward No.E/3 of the Civil Hospital, Ahmedabad, to record dying declaration of the deceased. The witness has stated that on the yadi an endorsement was made by the Doctor to the

effect that the patient was conscious. The witness has stated that he had received the yadi at about 11.50 hours in the morning and that on the basis of yadi he had gone to Ward No. E/3 of Civil Hospital, Ahmedabad, at about 13.00 hours. The witness has stated that he had approached the victim, who was being treated in E/3 Ward, and had thereafter recorded her dying declaration as narrated by her. The witness has further stated that recording of dying declaration was commenced at about 13.00 hours and completed by 13.15 hours. The witness has also informed the court that after recording of the dying declaration of the deceased, he had read over the same to the deceased and the deceased had signed the same in his presence in token of same having been recorded correctly. The witness produced the dying declaration of the deceased at Exh.22.

In his cross-examination the witness has stated that the relatives of the deceased and police who were present near the victim were asked to leave the place before recording of dying declaration had commenced. The suggestion made by the defence that the injured had sustained 90% burns and was, therefore, not mentally fit to make declaration nor was able to give rationale

answers to the questions put to her is emphatically denied by him. The suggestion made by the defence that at the time when dying declaration of the deceased was recorded, her husband was by her side is also emphatically denied by him. The suggestion made by the defence that no proper answer was given to Question No.11 is also emphatically denied by him.

11 This is all what transpires from the testimony of the Executive Magistrate Mr. Varma. On re-appreciation of the evidence of Mr. Varma, this court is of the opinion that in the discharge of his official duty as an Executive Magistrate, he had visited Ward No.E/3 of Civil Hospital, after receipt of yadi from the First Grade Jamadar, who was posted at Civil Hospital, Ahmedabad and recorded the dying declaration of the deceased as narrated by her. The testimony of the witness indicates that he was satisfied that deceased was in a fit state of mind to make declaration and therefore he had recorded the declaration made by the deceased.

12 The declaration recorded by the Executive Magistrate Mr. Varma is produced by the prosecution at Exh.22. It is in Gujarati language and free translation

of the same in English reads as under :

Dying Declaration.

Date: 9.7.95

- Commenced at : 13.00 hours
Place : Civil Hospital, Ward #/3
- 1 What is your name? : Suriben Kanubhai Bhikabhai
 - 2 What is your age? : 25 years
 - 3 Where do stay? : Sadra
 - 4 Are you educated? : Yes. Upto SSC
 - 5 Are you married? : Yes since six years
 - 6 Who are other members
in the family? : We three and my father-in-law
 - 7 When the incident
took place? : Today in the morning I had
lighted fire in the hearth at
about 9.00 a.m. and at that
time my father-in-law
Bhikhabhai had come,
poured kerosene over me and
burnt me.
 - 8 Who was present at the
time of incident : My husband was present
 - 9 Where you Burnt by
anyone : Yes. I was set ablaze by my
father-in-law.
 - 10 Have you made any
attempt to commit
suicide : No

- 11 Do you have quarrel
with any one : Yes my father-in-law is
mentally upset and,
therefore, he had poured
kerosene over me and set me
ablaze.

The above statement recorded is narrated by me which no
time and correct and token thereof, I have signed the
same.

Suriben Kanubhai Prajapati

Completed 13/15 hours.

“

13 A bare reading of the above quoted dying
declaration produced by the Executive Magistrate Mr.Varma
makes it evident that he recorded the dying declaration
of the deceased as narrated by her. The answers given by
the deceased could not have been imagined and/or
fabricated by the Executive Magistrate. The dying
declaration in the version of the incident as narrated by
the deceased. It could not be even remotely probabalised
by the defence that the dying declaration was tutored
version of someone else. It does not suffer further any
serious infirmity at all. It is recorded in question and
answer form. Certain facts have been stated by the
deceased which were within her special knowledge.

Therefore, the dying declaration recorded by the Executive Magistrate Mr. Varma deserves to be acted upon.

14 Again the testimony of the Investigating Officer Panchabhai Bhagwanbhai Patel recorded at Exh. 26 shows that in the year 1995 he was discharging duties as PSI of Dehgam Police Station and had investigated the complaint lodged by injured Suriben. The witness has stated that the complaint of injured Suriben was reduced into writing by First Grade Jamadar Bhikhusinh Shivuji Chavda. The witness while deposing before the court, identified the signature of the First Grade Jamadar Bhikhusinh Shivuji Chavda, and stated that the complaint narrated by injured Suriben was reduced into writing by First Grade Jamadar Bhikhusinh. The witness has also stated that he had also compared the signature of injured Suriben which she had appended to the dying declaration by the Executive Magistrate Mr. Varma as well as the signature appended on the complaint and that they were tallying with each other. The witness has further mentioned before the court that he had drawn panchnama of place of incident, and that an Officer from the Forensic Science Laboratory, was summoned at the place of incident to examine the same.

In his cross-examination, the witness has stated that he himself had no personal knowledge about the complaint and the victim nor had personal knowledge about the incident in question. However, the suggestion made by the defence that a false charge-sheet was submitted against the appellant is emphatically denied by him. It is relevant to notice that the First Grade Jamadar Bhikhusinh Shivuji Chavada, who had reduced the complaint of the deceased into writing, could not be examined by the prosecution. However, the Investigating Officer Panchabhai Bhagwanbhai Patel, who was then PSI of Dehgam Police Station, has in terms asserted that the complaint was in the handwriting of First Grade Jamadar Bhikhusinh Shivuji Chavda, with whose signature and handwriting he was conversant. Therefore, there is no manner of doubt that the complaint which was lodged by the deceased and reduced into writing by First Grade Jamadar Bhikhusinh Shivuji Chavda, stands proved by the prosecution.

15 Section 47 of the Evidence Act 1872, inter alia, provides that when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting

of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. The explanation appended to Section 47, inter alia, provides that a person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him. The testimony of the Investigating Officer Mr. Patel recorded at Exh. 26 makes it more evident that he was acquainted with the handwriting of First Grade Jamadar Bhikhusinh Shivuji Chavda, who had reduced the complaint of the deceased into writing. It is relevant to notice that the First Grade Jamadar Bhikhusinh Shivuji Chavda was a subordinate police officer to Investigating Officer Mr. Panchabhai Bhagwanbhai Patel. Therefore, the assertion made by Mr. Panchabhai Bhagwanbhai Patel that he was conversant with the handwritings of First Grade Jamadar Bhikhusinh Shivuji Chavda deserves acceptance. Once, it is held that the complaint narrated by the deceased and reduced into writing by First Grade Jamadar

Bhikhusinh Shivuji Chavda, is admissible in evidence, the same will have to be treated as dying declaration of the deceased. The complaint which was reduced into writing by First Grade Jamadar Bhikhusinh Shivuji Chavda is in Gujarati language and free translation of the same in English reads as under :

9.7.95

My name is Suriben @ Sharmistha. I am wife of Kanubhai Bhikhabhai Prajapati. I am aged 25 and doing household work. I am staying in Prajapati Vas near Milk Dairy, Sadra, Taluka – Dehgam, District Ahmedabad.

On being asked, I state that I am residing at the above stated address with my husband and my father-in-law. My marriage had taken place before about seven years and during subsistence of my marriage I have given birth to a son, named Gunjan, who is aged five years. My parental house is at village Zindva and name of my father is Ranchhodbhai Somabhai Prajapati. Before about eight months, we had come to village Sadra to reside with my father-in-law from Gandhinagar and I was staying with my husband, and son at Sadra. Earlier, we were staying

in Sector 24, Gandhinagar where my husband was dealing in bricks. My father-in-law is aged about 55 and is mentally upset.

Today in the morning between 8.00 a.m. and 9.00 a.m. my husband was shaving beard outside the house whereas I was sitting near hearth for cooking and preparing tea. At that time, a tin containing about 5 liters of kerosene was lying near the hearth. My father-in-law all of a sudden entered the kitchen and asked me as to why I was preparing tea. So saying, he took up the kerosene tin and poured kerosene therefrom on the hearth as well as on me, as a result of which, I have received burn injuries over whole of my body. I had come out of house shouting and embraced my husband. My husband as well as others had extinguished fire on me by covering me with a quilt. I have received burn injuries over whole of my body whereas my husband had also received injuries on his hands. My uncle-in-law Nathabhai Bharatbhai and others have removed me to Gandhinagar Civil Hospital and after preliminary treatment I am referred to Ahmedabad Civil Hospital. The incident in question had taken place in the

morning between 8.00 a.m. and 9.00 a.m. when I was preparing tea on the hearth. During that time, when I was preparing the tea my father-in-law who is mentally upset had poured kerosene over me asking me as to why I was preparing tea and, therefore I have received burn injuries. I am in full senses. The complaint is reduced into writing as narrated by me and is true.

Suriben @ Sharmistha Kanubhai Prajapati

Before me
Bhikhusinh Shivuji Chavda
First Grade Jamadar
Dehgam.

16 A re-evaluation of the evidence of PSI Panchabhai Bhagwanbhai Patel, makes it evident that Mr. Bhikhusinh Shivuji Chavda who was then First Grade Jamadar was discharging duties at OPD Civil Hospital, Ahmedabad. The record clinchingly shows that in discharge of duty, First Grade Jamadar Bhikhusinh Shivuji Chavda had recorded the complaint of the deceased as narrated by her. The dying declaration made by the deceased in extremity is consistent and trustworthy. This court is satisfied that the dying declaration of the deceased is true and free from any embellishment. There are no

infirmities of such nature warranting further assurance and, therefore, the same deserves to be acted upon. No major part of any of the two dying declarations is demonstrated to be false with reference to any other reliable evidence on record. The victim was in a position to identify the appellant as her assailant. The version narrated by the victim in her two dying declarations is intrinsically sound and accords with probabilities. As no material part of the dying declarations is proved to be false by other reliable evidence, therefore, this court is of the opinion that the learned Judge of the Trial Court who had advantage of observing demeanour of the witnesses, committed no error in placing reliance on those two dying declarations for the purpose of fastening criminal liability on the appellant. The plea that in dying declaration recorded by the Executive Magistrate Mr. Varma, the deceased had signed as "Suriben Kanulal Prajapati Sadra" whereas the complaint reduced into writing by First Grade Jamadar Bhikhusinh Shivuji Chavda, was signed by the deceased as "Suriben @ Sharmistha Kanubhai Prajapati", and as there is difference in the signature the dying declarations should not be believed is merely stated to be rejected. It is relevant to notice that deceased Suriben was also

known as Sharmisthaben and merely because she has mentioned her name Suriben Kanulal Prajapati Sadra, while signing the declaration recorded by the Executive Magistrate Mr. Varma, one need not jump to the conclusion that the dying declaration recorded by Mr. Varma was not signed by the deceased. In fact, as noticed earlier, the Investigating Officer has asserted in his testimony that the signature on both the dying declarations were tallying and were of the deceased. This statement made by the Investigating Officer is not challenged by the defence in his cross-examination at all. Therefore, the assertion made by the Investigating Officer will have to be accepted and acted upon. The contention that the bandage was applied on the affected parts of the body including fingers, as a result of which, the deceased could not have signed two dying declarations, has also no merits. The record does not indicate that at the time when the complaint of the deceased was reduced into writing, bandage was applied on her hand or fingers. Similarly, the record does not show that bandage was applied on the hand and/or fingers of the deceased when dying declaration was reduced into writing by the Executive Magistrate Mr. Varma and signed by the deceased. It is relevant to notice that neither it is suggested to

the Executive Magistrate Mr. Varma nor to the Investigating Officer Mr. Patel that either Mr. Varma or the first grade Jamadar had forged the signature of Suriben and appended the same on the dying declarations. Therefore, the plea that in view of different signatures found on the two dying declarations, the appellant should be acquitted, cannot be accepted. The contention that as the deceased had received extensive burn injuries, she could not have made the statement either in the form of complaint or dying declaration and, therefore, the dying declarations should be discarded, is devoid of merits. In LAXMAN vs. STATE OF MAHARASHTRA, (2002)6 SCC 710, a Constitutional Bench of the Supreme Court has ruled that it is the duty of the court to decide whether the declarant was in a fit state of mind to make the declaration. What is emphasized by the Supreme Court is that the evidence of the Magistrate who had recorded the dying declaration to the effect that he was satisfied that the deceased victim was in fit state of mind to make declaration should not be ignored notwithstanding, absence of doctor's certification as to mental fitness of the declarant. Applying principle laid down by the Supreme Court in above quoted decision to the facts of the case, this court is of the opinion that the two

dying declarations are genuine, consistent as well as cogent and inspire confidence of the court. Once, it is held that the two dying declarations are consistent, cogent and acceptable, the same will have to be acted upon. On scrutiny of two dying declarations of the deceased, this court is of the opinion that the charge levelled against the appellant of pouring kerosene over the deceased and setting her ablaze is fully and satisfactorily established. It may be stated that in his further statement it was claimed by the appellant that his son Kanubhai had set the deceased ablaze and that he was falsely implicated in the case. It means that the fact that the deceased was set on fire is not disputed by the appellant and the question would be as to who was the person who had set the deceased on fire. The answer to this question is to be found from the two reliable dying declarations of the deceased which establish that the appellant is the perpetrator of crime. It may be mentioned that no attempt worth the name was made by the appellant to probalise his defence that his son had killed the deceased and that he was falsely implicated in the case. The medical evidence on record shows that deceased had died due to shock of burns. The record does not show that the deceased had sustained injuries

accidentally or that she had received the burn injuries while committing suicide. Therefore, the finding recorded by the learned Judge of the Trial Court that it is proved by the prosecution beyond reasonable doubt that the deceased died as homicidal death is found to be eminently just and is hereby upheld. The appellant had not taken the plea that he was of unsound mind and in unsound state of mind, had set the deceased on fire after pouring kerosene over her. On the facts and in the circumstances of the case, it will have to be held that the appellant had committed murder of the deceased and that the offence committed by him is one punishable under Section 302 of the IPC. This court has not found any substance in any of the arguments advanced at the bar and, therefore, the impugned judgment will have to be upheld.

16 For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of the directions given by the learned Judge in the impugned judgment.

(J.M.PANCHAL, J.)

(J.R. VORAL J.)