

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL APPEAL NO.883 of 1997**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE HARSHA DEVANI**

- =====
- 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?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
  - 5 Whether it is to be circulated to the civil judge?
- =====

**STATE OF GUJARAT....Appellant(s)**  
**Versus**  
**RAKESHBHAI VALSI & 1....Respondent(s)**

=====

Appearance:

MR KL PANDYA, ADDITIONAL PUBLIC PROSECUTOR for the Appellant  
 MR NITIN M AMIN, ADVOCATE for the Respondent(s) No. 1 - 2

=====

**CORAM: HONOURABLE MS. JUSTICE HARSHA DEVANI**

**Date : 29/11/2012 & 30/11/2012**

**ORAL JUDGEMENT**

1. This appeal is directed against the judgment and order dated 30<sup>th</sup> June, 1997 passed by the learned Additional Sessions Judge, Court No.15, Ahmedabad City in Sessions Case

No.215/1993 whereby the respondents-accused have been acquitted of the offences alleged against them.

2. The facts stated briefly are that one Reenaben Rakeshbhai Velsi Kristoperson (Christian) lodged a first information report before Shridhar Ramavadh Tiwari, Police Sub-Inspector, Bapunagar Police Station against the accused for commission of the offences under sections 306 and 498-A read with 114 of the Indian Penal Code alleging that a year prior thereto, she was married to the respondent No.1 and was thereafter residing with her husband at Nadiad alongwith her in-laws. Since the last six months, they had shifted to Ahmedabad at Bapunagar and were residing there. While they were residing with her in-laws, her husband was not harassing her in any manner, however, since the last six months when they had shifted to Bapunagar, her husband would time and again consume liquor and harbour suspicion against her and beat her up. However, with a view to save her marriage, she was tolerating everything. Two days prior thereto, her husband had consumed liquor and harbouring suspicion against her, had beaten her up badly whereupon she had informed her parents, who had thereafter tried to make her husband understand. On the previous day, her brother-in-law Rashmin had come from Nadiad and in the afternoon at about 1:30 her friend Wilson who resides at Hathijan came there to meet her, at which point of time her brother-in-law was at the house. In the night at about 8.15 p.m., while she was having her meal at home, her husband also happened to be at home, and wrongly suspecting her, asked her why Wilson had come in the afternoon? in response to which she had told him that she considered Wilson to be her brother and as his sister was ill, he

had come to inform about the same. Upon her saying so, her husband got incited and told her that Rashmin had told him everything and thereafter suspecting her, started saying whatever he felt like and told her that it was better if she dies. She took what he said to heart, and as she was already tired of being beaten up time and again and was no longer able to bear the harassment wrongly meted out to her, she had poured kerosene over her body and lighted a matchstick, whereupon her clothes caught fire and she started screaming. Her husband came and covered her with a blanket and the flames were doused. That she had sustained severe burns and the members of her block had seated her in a rickshaw and brought her to Shardaben Hospital where she was admitted to the burns ward.

3. During the course of trial, the prosecution examined nine witnesses and produced certain documentary evidence. Upon culmination of the trial, the learned Additional Sessions Judge found that the dying declaration in the nature of the first information report (Exh.34) was an important piece of evidence. However, such first information report was sought to be proved through the deposition of Shridhar Ramavadh Tiwari-P.W. 6 which did not inspire confidence and as such the first information report itself becomes doubtful. The learned Judge further found that there was no reason not to believe the testimony of the independent witness namely, prosecution witness No.7 – the Medical Officer. In the light of the testimony of the Medical officer, an independent witness, who had deposed regarding the effect of the medicines which were given to the deceased, which would start acting almost immediately, within 2-3 minutes, the learned Judge was of the

view that there was no material whatsoever to indicate that deceased Reenaben was conscious at the time when such first information report was recorded inasmuch as no opinion of the doctor or the attendant nurses had been taken. Considering the fact that the first information report (Exh.34) which was the dying declaration and was the main piece of evidence had not been proved beyond doubt by the prosecution, the learned Judge held that the prosecution was not in a position to establish its case against the accused and acquitted them of the charges levelled against them.

4. Assailing the impugned judgment and order, Mr. K.L. Pandya, learned Additional Public Prosecutor drew the attention of the court to the yadi (Exh.27) written by the Police Sub-Inspector to the Executive Magistrate wherein the endorsement of the doctor to the effect that the patient is conscious was obtained at 10.15 p.m. on 20<sup>th</sup> April, 1993. It was submitted that prosecution witness No.6 had commenced recording the dying declaration at 10:15 p.m. which was completed at around 11:40 p.m. and the first information report was registered at 11.40 p.m. It was submitted that endorsement on the yadi (Exh.27), makes it amply clear that the patient was conscious at the time when the dying declaration was recorded, and hence, the trial court was not justified in holding that the dying declaration was doubtful in nature.

5. It was further submitted that the trial court has erred in placing reliance on the evidence of the medical witness inasmuch as the said Medical Officer was not the Medical Officer who had attended the patient. Moreover, from

the testimony of the medical witness there is nothing to indicate as to at what time treatment was given to the patient for coming to the conclusion that the medicine namely, Morphine would start acting within 2-3 minutes of administration thereof. Under the circumstance, the dying declaration which had been recorded by a police officer who had no grudge against the respondents, at a time when the patient was conscious, ought to have been believed by the trial court. It was submitted that the prosecution has, therefore, established its case against the respondents, hence, the judgment of acquittal is required to be reversed and the respondents are required to be convicted for the offences with which they have been charged.

6. Vehemently opposing the appeal, Mr. Nitin Amin, learned counsel for the respondents submitted that there is no evidence on record to show that the deceased was in a fit state of mind when the first information report was recorded. It was pointed out that the alleged dying declaration namely, the first information report does not bear the time when the recording was commenced and the time when the same was concluded. It was further submitted that there is no endorsement on such dying declaration of the Medical Officer to the effect that the patient was in a conscious state of mind. Referring to the deposition of Dr. Virendra Kanhaiyalal Shah, the Medical Officer, it was pointed out that as per the say of the said doctor, upon considering the notes it was evident that the deceased had been given 'Morphine' which would start taking effect immediately after 2-3 minutes. That the doctor had further stated that since the patient had trouble in breathing, a cut had to be put on her windpipe and a tube had to be

inserted for oxygen supply. It was submitted that considering the condition of the deceased, it is highly doubtful that she could have been in any position to give any statement as stated to have been recorded by the said witness. Referring to the deposition of the other witnesses, it was pointed out that as many as three witnesses had stated that while bringing the deceased to the hospital in the rickshaw, she was in an almost dead condition. Referring to the deposition of Shri Shridhar Ramavadh Tiwari, the police officer who had recorded the dying declaration, it was pointed out that he had taken a thumb mark of the deceased on the first information report. Reference was made to the inquest panchnama to point out that the same does not reflect any ink stains on the thumb of the deceased, which has been admitted by the Deputy Superintendent of Police-P.W.9. It was submitted that under the circumstances, the recording of the first information report is itself doubtful in nature. It was urged that considering the totality of the evidence which has come on record, the trial court has rightly come to the conclusion that the deceased was not in a fit state of mind to record any dying declaration. Moreover, the close relatives of the deceased namely, P.W.1, P.W.2 and P.W.3, viz., the father, mother and brother of the deceased had contradicted the statements made in the dying declaration inasmuch as they have categorically stated that the respondent-husband had not caused any harassment to the deceased. It was pointed out that according to the testimony of P.W.4 – Tulsibhai Nathabhai Thakor, who had gone alongwith with the deceased in the rickshaw, when the deceased was taken in the rickshaw, she could not speak and looked like she was dead. When she was taken to the hospital, she had not spoken anything and there was no movement of

her body.

7. A perusal of the evidence led by the prosecution indicates that the prosecution has examined, in all, nine witnesses. Prosecution witnesses No.1, 2 and 3 are the father, mother and brother of the deceased. All the three witnesses have been declared to be hostile to the prosecution case and have not supported the case of the prosecution. Prosecution witness No.4 – Tulsibhai Nathabhai Thakor who has been examined at Exh.21 was the neighbour of the deceased and the accused No.1. As per his say, on 20<sup>th</sup> April, 1993, in the evening, he was standing at the paan shop after which he had gone home for dinner, when he found that public had gathered. He had called a rickshaw and they had taken the lady to Shardaben Hospital. When they had taken her in the rickshaw, she was not speaking and was almost like dead. When they reached the hospital, she did not speak anything nor was she moving. The said witness has also been declared to be hostile to the prosecution case. Prosecution witness No.5 – Deepak Ramanlal Solanki was another person who was present when people had gathered at the spot immediately after the occurrence of the incident. He has also stated that Tulsibhai had called the rickshaw and the lady was lifted and taken in the rickshaw, at which point of time, she could neither speak nor move and appeared as if she was dead. That he had also gone to the hospital and till they had reached the hospital and the doctor had taken the charge, she had not spoken anything. The said witness has also been declared hostile.

8. The case of the prosecution principally rests upon the testimony of Shridhar Ramavadh Tiwari who, at the

relevant time, was discharging duties as Police Sub-Inspector and had recorded the first information report which is in the nature of a dying declaration. He has deposed that on 20<sup>th</sup> April, 1993 in the evening at 21:40 hours, he had received a vardhi from the PSO, pursuant to which he had gone to Shardaben Hospital where he had met the Medical Officer who was on duty and had inquired into the facts stated in the vardhi. He had inquired as to whether the lady who had suffered burns injuries was conscious and the Medical Officer present there had stated that she was conscious whereupon he had sent a yadi (Exh.27) to the Executive Magistrate for the purpose of recording her dying declaration wherein the doctor had made an endorsement to the effect that the patient was conscious. He has further stated that after sending the yadi to the Executive Magistrate, he had approached the deceased and had put questions to her and after ascertaining that she was fully conscious, he had asked her name and other details and thereafter recorded her statement. That after recording her statement, the deceased had put her thumb impression on the first information report in his presence. He has further identified the thumb impression of the deceased. As per his say, the deceased had stated that her marriage with the accused No.1 had taken place a year prior thereto and six months ago they had come to stay at Bapunagar in Ahmedabad. From the time they had come to Bapunagar, her husband used to often consume liquor and in an inebriated condition would suspect her and beat her up. That at 8.15 at night when she was taking her dinner, on the basis of false suspicion, he had asked her why Wilson had come in the afternoon. To which she had replied that she had made Wilson her brother and that since his sister was not well, he had come



to inform her about the same, whereupon he got angry and said that Rashmin had told him about it and falsely suspecting her, he started abusing her and told her that it is better if she dies which she took to heart and being fed up with the harassment meted out to her time and again which she could not tolerate, she felt that it would be better if she died and took out the kerosene from the primus and sprinkled it over herself and lighted a matchstick whereupon her clothes caught fire and she started screaming. Her husband came with a blanket and covered her with it. That people from the block came and took her to Shardaben Hospital.

9. In his cross-examination, he has admitted that 5 to 6 relatives were near the deceased and her father, mother and brother and other relatives were also present when he went there. That he had not recorded the dying declaration in the presence of the doctor, nurse or any independent person nor had he taken their signature thereon.

10. The prosecution has also examined one Dr. Virendra Kanhaiyalal Shah who has produced the medical case papers at Exh.35 and 36. The said medical officer, in his deposition, has stated that as the deceased had difficulty in breathing, a cut had to be put on her windpipe and a tube was required to be inserted for giving her oxygen. He had also agreed that if the medicines which are shown in the prescription are administered, the patient would either not speak at all or would be incoherent. He has further stated that the effect of morphine would start within a minute or two of the same being administered. The prosecution has also examined the Investigating Officer at Exh.40. From the evidence which has

come on record, it is apparent that the entire case of the prosecution is built upon the so-called dying declaration recorded by P.W.6 – Shridhar Ramavadh Tiwari. Thus, the testimony of the said witness requires minute scrutiny.

11. A perusal of the dying declaration/first information report indicates that the time of recording the same is not mentioned. The said first information report bears a thumb impression below which it is written that the same is the thumb impression of Reenaben Rakeshbhai. The said first information report does not bear any endorsement of the Medical Officer to the effect that the patient is conscious and in a fit state of mind. The witness who had accompanied the deceased to the hospital has stated that she had not spoken anything on the way nor was she in a position to speak anything. However, the medical record of the deceased indicates that at 9.00 p.m. when she was examined after being brought to the hospital, she was conscious and oriented. Exh.27 which is the yadi sent by the Police Sub-Inspector to the Executive Magistrate, bears an endorsement to the effect that the patient is conscious and the time of making such endorsement is 10:15 p.m. However, the prosecution has not examined the concerned person who has made such endorsement as a witness nor has any Medical Officer been examined for the purpose of establishing that the patient was conscious and in a fit state of mind at the time when the dying declaration was recorded.

12. Another aspect of the matter is that the Police Sub-Inspector who recorded the statement of the deceased has stated that he had taken stamp pad alongwith him for the purpose of obtaining the thumb impression of the deceased;

however, the inquest report does not indicate any ink stains on the thumb of the deceased.

13. Having regard to the conflicting evidence which has come on record namely, the evidence of the eye-witnesses who had brought the deceased to the hospital who stated that the patient was not in a position to speak; as well as considering the evidence of the Medical Officer who was examined, who has stated that a cut had been put in the windpipe of the deceased for the purpose of inserting a tube for administering oxygen to the deceased, as well as the fact that she had been given morphine which according to the said doctor would take effect within 2 to 3 minutes whereupon the patient would either stop speaking or would be incoherent, in the opinion of this court, no conviction could be based solely on the testimony of prosecution witness No.6 and the so-called dying declaration recorded by him. Under the circumstances, it cannot be said that the trial court committed any error in coming to the conclusion that the prosecution has not established its case beyond reasonable doubt.

14. In the light of the above discussion, the appeal fails and is, accordingly, dismissed.

**( Harsha Devani, J. )**

**hki**