

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL NO. 117 of 1997**  
**With**  
**CRIMINAL APPEAL NO. 398 of 1997**  
**With**  
**CRIMINAL APPEAL NO. 400 of 1997**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE KS JHAVERI**  
**and**  
**HONOURABLE MR.JUSTICE G.B.SHAH**

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	<b>YES</b>
2	To be referred to the Reporter or not?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment?	<b>NO</b>
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?	<b>NO</b>

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**RAKESH RAMSAJIVANSING TOMAR & 1....Appellant(s)**

**Versus**

**STATE OF GUJARAT....Opponent(s)/Respondent(s)**

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**Appearance:**

**MR JAY THAKKAR for MR YOGESH S LAKHANI, ADVOCATE for the Appellant(s) No. 1 - 2**

**MR LR PUJARI, APP for the Opponent(s)/Respondent(s) No. 1**

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**CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**  
**and**  
**HONOURABLE MR.JUSTICE G.B.SHAH**

**Date : 31/08/2015**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. These Criminal Appeals, filed by the State as well as the original accused Nos. 2, 3 and 4 have been directed against the judgment and order dated 10/12/1996 passed by the learned Special Judge, Court No. 15 in Atrocity Criminal Case No. 13 of 1996 whereby, the learned trial Judge was pleased to convict all the accused for the charges levelled against them. Accordingly, the State has preferred the Criminal Appeal No. 400 of 1997 for enhancement of sentence whereas, the original accused Nos. 2, 3 and 4 have preferred the Criminal Appeal Nos. 117 and 398 of 1997 against conviction.
2. Brief facts of the prosecution case are that on 12/02/1996 at about 11:30 p.m. complainant – Lalsing Shriramsing was sleeping at her residence situated in Kumbhaji ni Chali, Meghaninagar, Ahmedabad. He was sleeping on the floor, whereas, his sister was sleeping on the coat and at that time,

somebody knocked the door and shouted for him and hence, he woke up and opened the door. On opening the door, four persons – the accused, rushed in his home, out of whom, two caught hold the complainant and slapped him and threatened to kill him if he shouted and then closed the door and hence, the complainant scared and stood aside. Then, the accused started molesting the sister of the complainant and torn her clothes and hence, she warned the accused not to behave like that otherwise, she would kill herself. However, since the accused did not stop, she took the kerosene can lying there and poured on herself and firstly tried to set her ablaze by the firing lamp, however, since the said lamp extincted, she got the matchbox lying nearby and set her ablaze. The complainant tried to save her in which, he also sustained some burn injuries. As the sister of the complainant was burning, the accused ran away from the spot. The sister of the complainant as well as the complainant were taken to the civil hospital where, they were treated. Statement of the sister of the complainant came to be recorded and then, she succumbed to the injuries. Accordingly, the complaint came to be lodged against the accused.

2.1 Pursuant to the complaint, investigation was carried out. After

investigation, charge-sheet was filed and assign the case to the Special Court at Ahmedabad City.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the accused, the prosecution has examined as many as 13 witnesses and also produced several documentary evidence.

2.4 At the end of the trial and after recording Further Statements of the accused under Section 313 of Criminal Procedure Code, 1973 (*'the Code' for brevity*) and hearing arguments on behalf of prosecution and the defence, the learned trial Judge convicted the accused by impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Special Court, the State as well as the original accused Nos. 2, 3 and 4 have preferred the present appeals, as aforesaid.

3. We have heard Ms. Pujari, learned Additional Public Prosecutor, for the appellant – State in Criminal Appeal No. 400 of 1997 and learned advocate Mr. Jay Thakkar for Mr. Y. S. Lakhani, learned advocate for the appellants - original accused Nos. 2 and 3.
4. We have examined the matter carefully and gone through the evidence on record. We have appreciated, re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon'ble Apex Court. The crucial witness in the case on hand is Lalsing, the complainant, whose deposition is recorded at exh. 17, who has completely narrated the incident in question and thereby supported the case of the prosecution. He has stated in his deposition that he knows the accused No. 1 Prakash Narayan @ Munna since he resided near the village of Lalsing in Uttar Pradesh and the incident had occurred since the accused believed that Lalsing had runaway with the deceased who was of the Thakore community. He has narrated the complete story of the prosecution case that on the day of incident, he and his deceased sister were in the room at that time, somebody had knocked the door and hence, he opened the door and found four persons; he was first slapped by them; he also identified the

persons who had slapped him; he was threatened to kill if shouted; they started misbehaving with the deceased – lady – sister of the complainant; he identified two persons namely Prakash Narayan @ Munna and Gajendra @ Kallu, out of four; they torn the clothes of the lady and she was mishandled and hence, the complainant shouted and hence, the accused started beating him leaving the sister of the complainant; as soon as the sister of the complainant got the chance, she poured kerosene on herself and asked the accused, if they would mishandle her further, she would kill herself; she first tried to ablaze herself by firing lamp and when the lamp extincted, she set her ablaze by lighting matchstick from the matchbox lying nearby. Thus, the complainant has narrated the whole incident as per the complaint. Moreover, while saving the life of the deceased sister of the complainant, the complainant was also injured for which he had taken treatment. The documents at exhs. 21 and 22 which are the history and the certificate of the hospital where the complainant had taken treatment, substantiate the aforesaid fact. In that view of the matter, presence of PW-1 – Lalsing Shriramsing, the complainant, is clearly established. The sister of the complainant succumbed to the injuries and the complaint was lodged. Moreover, in the Test Identification Parade

conducted, the complainant identified all the accused. The medical evidence as well as the evidence of the Executive Magistrate and the Investigating Officer, clearly show that the prosecution has successfully prove the case against the accused beyond reasonable doubt. The original accused No. 1 has not preferred the appeal since he has already undergone the sentence imposed upon him. In aforesaid view of the matter, in our considered opinion the prosecution has succeeded in proving the case against the accused beyond reasonable doubt and accordingly, the sentence of five years as has been imposed by the learned trial Judge, in our opinion, is lesser and the trial Court is too lenient on that aspect, however, looking to the age of the appeal and period of about 19 years has been passed, we deem it proper not to enhance the sentence and thereby, not disturbing the impugned judgment and order *qua* awarding the sentence. Accordingly, all the appeals, require to be dismissed.

5. In view of the aforesaid discussion, the present appeals having found without any substance, fail and are dismissed accordingly. The impugned judgment and order dated 10/12/1996 passed by the learned Special Judge, Court No. 15, Ahmedabad City in Atrocity Criminal Case No. 13 of 1996 is confirmed. The

accused, if on bail, are directed to surrender before the concerned jail authority within a period of 08 (eight) weeks from today. Their bail bonds shall stand cancelled. Registry to return the record and proceedings to the trial Court forthwith.

**[ K. S. Jhaveri, J. ]**

**[ G. B. Shah, J. ]**

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