

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 368 of 1996

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

Sd/-

and

HONOURABLE MR. JUSTICE M. R. MENGDEY

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT

Versus

KIRTIKUMAR @ GANDIYA KHODIDAS PARAMAR & 4 other(s)

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Appearance:

MS. KRINA CALLA, APP for the Appellant(s) No. 1

BAILABLE WARRANT UNSERVED for the Opponent(s)/Respondent(s) No. 1,2,3,4,5

DS AFF.NOT FILED (N) for the Opponent(s)/Respondent(s) No. 1,2,3,4,5

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 29/04/2023****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

1. Present Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, 1973, against the acquittal recorded by the judgment and order dated 07.02.1996 passed in Sessions Case No.220 of 1992 by the Additional City Sessions Judge, Ahmedabad City. By the aforesaid impugned judgment and order, five respondents-accused have been acquitted for the offences under Section-302, 114, 304(B), 498(A) of the Indian Penal Code.
2. This Court by order dated 16-08-1996 admitted an Appeal of the State. Vide Exh-1, the charge was framed and the gist of which is as under:

“Accused No.1 Kirtikumar was married with deceased Kokilaben around three years before 12/03/92. Accused No.2, 3, 4 and 5 are the brother, mother, sister and niece of the Accused No.1, respectively.

On 12/03/92, at around 12:00 o’clock in afternoon, Accused No.3 Santokben poured kerosene on the deceased Kokilaben and set her ablaze with the intention of causing her death in collusion with other accused persons at the resident of the accused persons at Bungalow No-9, Narmadanagar Society, Bapunagar, Ahmedabad. Accused No. 2, 4 and 5 caught hold the deceased Kokilaben and caused her death in collusion with one another by causing burn injuries to her, and thereby, the

accused persons committed an offence punishable under section 302 read with section 114 of the IPC.

Further, after her marriage with Accused No.1 at the said time, date and place, accused used to harass her mentally and physically by taunting her regarding dowry and the job of Accused No.1 and by causing her unnatural death, the accused committed an offence punishable under section 304 (b) read with section 114 of the IPC.

Further, the accused persons used to harass deceased Kokilaben mentally and physically by taunting her regarding dowry and the job of Accused No.1 after her marriage with Accused No.1, and by causing the unnatural death of the deceased Kokilaben at the said time, date and place after committing cruelty to her, the accused persons committed an offence punishable under section 498-A read with section 114 of the IPC.”

3. When the matter is taken up, it is reported that accused no.1 (Kirtikumar @ Gandiya Khodidas Paramar), accused no.2 (Kishanbhai @ Provin Khodidas Parmar) and accused no.3 (Santokben W/O Khodidas Parmar) have expired. The Report dated 29-04-2023 by the Police Inspector, Bapunagar Police Station is taken on record.
4. The accused no.4 (Minaben D/O Khodidas Muljibhai Parmar) and accused no.5 (Ranjanben D/O Saburbhai Ganeshbhai Parmar) are Sister-in-law of the deceased, who are present in the Court.
5. Learned APP has submitted that an error is committed in recording acquittal as the case of the prosecution dependent upon the dying

declaration. In the dying declaration, the victim had clearly implicated the accused persons.

6. Learned APP has thereafter taken this Court to the evidence of Medical Officer through whom, the Postmortem report was proved to indicate that the cause of death was on account of burn injuries and was due to shock of burn and its complications. Therefore, the prosecution has established it be the case of homicidal death. Learned APP has also taken this Court through the dying declaration at Exh-24 exhibited through the Executive Magistrate, wherein it is stated by the victim that her mother-in-law came and poured kerosene on her and set her ablaze and gave her kick blows and went to terrace and brother-in-law went on the road, whereas sister-in-law went out for work. Therefore, dying declaration is required to be given sufficient weightage in view of the provision of Section-32(1) of the Indian Evidence Act.

7. The Court has taken into consideration relevant documents of the case and would focus on the most relevant documents being the dying declaration.

8. It is from the record, it appears that the incident took place on 12-03-1992 and the F.I.R. by the victim herself was recorded, which is exhibited vide Exh-28. In the F.I.R., she has stated that while

she was putting vessel containing water on the primus for heating and after water was sufficiently heated, she caught hold of the vessels with the piece of cloth. At that time, flame caught saree of the victim, which was of polyester and she was burned. Dying declaration was recorded on 12-03-1992 vide Exh-39, wherein also, before the Executive Magistrate, the victim has given same version of the accidental fire. It is vividly described that while she was removing the vessels containing hot water, water caught hands of the victim, because of which she let go vessel on the primus and the primus was over turn leading to the flame catching saree of the victim. Thereafter, yet another dying declaration was recorded on 14-03-1992 (Exh-24), where she has given the version different than the version given in the F.I.R. and previously recorded the dying declaration and here, she has stated that her mother-in-law forced her to give false version earlier.

9. Close perusal of the dying declaration in whatsoever manner, it is evident that at-least the respondent No.4 and 5 have no role to play at all. Only role attributed is to accused no.3 (Santokben W/O Khodidas Parmar), who has already reportedly expired.

10. Considering the aforesaid facts, the Appeal stood already abated for accused no.1 (Kirtikumar @ Gandiya Khodidas Paramar), accused

no.2 (Kishanbhai @ Provin Khodidas Parmar) and accused no.3 (Santokben W/O Khodidas Parmar).

11. So far as the respondent No.4 and 5 are concerned as observed herein above, even if the version of the dying declaration in any of two dying declaration and the F.I.R. is concerned, no role has attributed to the respondent No.4 and 5.

12. Therefore, this Court while accepting the reasoning given by the Sessions Court and so also the separate reasoning given herein above, the Court is not inclined to interfere with the acquittal recorded.

13. In the result, the appeal fails and is ***dismissed***. The judgment and order dated 07.02.1996 passed in Sessions Case No.220 of 1992 by the Additional City Sessions Judge, Ahmedabad City stands confirmed. Bail and bail bonds of the accused, if any, stand discharged. R & P be sent back to the concerned Trial Court.

Sd/-
(A.Y. KOGJE, J)

Sd/-
(M. R. MENGDEY, J)

PARESH SOMPURA