2025 INSC 1268

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1934 OF 2017

JEMABEN **...APPELLANT(S)**

Versus

THE STATE OF GUJARAT **...RESPONDENT(S)**

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. The present appeal has been directed against the final order dated 21.07.2016 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 539 of 2006, by which the High Court has allowed the appeal filed by the State of Gujarat *qua* the present appellant/accused, and thereby, partly set aside the judgment dated 19.11.2005 rendered by the Additional Sessions Judge and Presiding Officer, 6th Fast Track Court, Banaskantha, at Deesa in Sessions Case

Number 40 of 2005. Thus, the High Court convicted the appellant/accused for committing the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") and sentenced with imprisonment for life and a fine of ₹ 10,000/-, and in default to further undergo simple imprisonment of one month.

2. The brief facts of the present case are as under:-

(i) It is the case of the prosecution that the appellant/accused and the co-accused, Bherabhai Revaji Majirana, entered into criminal conspiracy in order to kill Leelaben and Ganesh, her son, and to execute the said conspiracy, on the date of the incident, i.e. the intervening night of 29.11.2004 and 30.11.2004, when Leelaben and her son were sleeping in their hut, the appellant/accused poured kerosene upon Leelaben and set her ablaze. As a result, Leelaben received severe burn injuries and she was taken to the Civil Hospital, Palanpur. On 04.12.2004, Leelaben succumbed to the injuries, and her son received burn injuries to the extent of 10 to 12%.

(ii) On 05.12.2004, the complaint was filed by PW-1, Geetaben (sister of Leelaben). On the basis of the complaint, the investigating officer carried out the investigation and during the course of the investigation, the statement of the witnesses were recorded, the evidence was collected and thereafter the chargesheet was filed against both the accused persons. The charges were framed for offences punishable under Sections 302, 307, 436, 34, 120 (b) of the IPC and Section 135 of the Bombay Police Act,1951.

(iii) The Trial Court acquitted both the accused persons, mainly on the ground that there are discrepancies in three dying declarations given by Leelaben, the deceased.

(iv) The State of Gujarat challenged the order of acquittal by filing a Criminal Appeal before the High Court. The High Court *vide* the impugned order allowed the appeal *qua* the appellant/accused and thereby, set aside the order of acquittal passed by the concerned trial court. The High Court convicted the appellant/accused for

committing the offence punishable under Section 302 of the IPC.

3. Against the impugned order passed by the High Court, the appellant/accused has preferred the present appeal.

4. Learned Counsel appearing for the appellant/accused mainly contended that the case of the prosecution rests primarily on the dying declaration given by the deceased. However, there are major discrepancies in the story put forward by the prosecution. In fact, version of the complainant (PW-1), Kalubhai Lakhuji (PW-4, husband of Leelaben), as well as other documentary evidence contain major discrepancies, inconsistencies and material contradictions. Thus, the trial court has rightly acquitted the appellant/accused, despite which, the High Court has, substantially relied upon the deposition given by Dr. Shivrambhai Nagarbhai Patel, (PW-3, Incharge Medical Officer) as well as relied upon the Yadi given by the said Doctor to the Police, which mentioned the history given by the deceased before the said witness, and thereby recorded the order of conviction of the appellant/accused. Learned Counsel submitted that the High Court has committed grave

error while relying upon the Medical Certificates of Leelaben and Ganesh (Exhibit 20 and 21, respectively).

5. It is further submitted that because there are major discrepancies in the three dying declarations given by the deceased, the trial court has acquitted the appellant/accused by giving benefit of doubt to the appellant/accused. Therefore, even if there are two views possible on the basis of the evidence led by the prosecution before the trial court, when the trial court has taken the one possible view, the High Court ought not to have interfered with the said view taken by the trial court. Learned Counsel for the appellant/accused, therefore, urged that the impugned order passed by the High Court be set aside and thereby, the appellant/accused be acquitted.

6. *Per contra*, learned counsel appearing for the respondent-state has vehemently opposed the present appeal. Learned Counsel for the State mainly submitted that, in the case of multiple dying declarations, each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is submitted that in the present

case, even though the dying declaration has not been recorded by the Executive Magistrate, it is clear from the medical certificate issued by PW-3, that the statement of the deceased, recorded first in point of time, reveals that the deceased was burnt by the appellant/accused, who was the aunt-in-law of the deceased, by pouring kerosene from the tin and setting the deceased on fire. On the very same day, the deceased described the motive behind the incident that the appellant/accused was compelling the deceased to go with one, Mania Dabhawala, with whom the appellant/accused was acquainted and refusal by the deceased thereto, resulted into the incident in question. It is further submitted that from the postmortem report (Exhibit 25), and severe burn injuries sustained by the deceased almost all over the body and the manner in which the burn injuries were caused, would reveal that it was not the case of an accidental death.

7. Learned Counsel for the respondent-State further referred to the panchnama (Exhibit 12) and submitted that one empty kerosene container having smell of kerosene was found at the place of incident. Similarly, soil having smell of kerosene

was also collected from the place of incident. At this stage, it is further submitted that even PW-3 deposed that the whole body and clothing of the deceased was having the smell of kerosene and she sustained 100% burn injuries.

8. Learned Counsel for the respondent-State, lastly, contended that the son of the deceased was sleeping beside the deceased. However, from the Medical Certificate issued by PW-3, it is revealed that the said boy, aged about 4 years, sustained 10-12% burn injuries. Learned Counsel for the respondent-State, therefore, contended that from the aforesaid evidence led by the prosecution, it can be said that the dying declaration given by the deceased before the independent witness, i.e. PW-3, is rightly relied upon by the High Court. It is further submitted that there was only one possible view on the basis of the aforesaid evidence which was required to be taken by the trial court, and therefore, when the trial court has not properly appreciated the aforesaid important aspects/evidence in the present matter, the High Court has rightly set aside the order of acquittal passed by the trial court *qua* the appellant/accused. Learned Counsel, therefore, urged that no interference is

required in the impugned order of the High Court and the present appeal is liable to be dismissed.

9. We have considered the submissions canvassed by the learned counsel for the parties. We have also perused the entire record and the evidence led by the prosecution.

10. It emerged from the record that when the deceased was brought to the hospital, she narrated the incident before the Doctor (PW-3) wherein she specifically stated that “my aunt-in-law, Jemaben poured kerosene on me and set ablaze.” Further, when she was asked again by the doctor, she disclosed that “my aunt-in-law asked me to go with Mania Dabhawala, I refused for the same and, therefore, she burnt me alive”. It is pertinent to note that the aforesaid documentary evidence was duly proved as per the testimony of PW-3. Similarly, the Yadi given by the Doctor to Police Station, Palanpur city, further suggests that deceased specifically narrated that the appellant/accused, her aunt-in-law, set her ablaze. It is also specifically stated by the Doctor in the said Yadi that the patient was conscious and she was in a position to speak. Therefore, the said police officer was asked to make arrangements for recording the dying

declaration of the deceased. At this stage, it is also relevant to observe that the Medical Certificate of the deceased also states that the "whole body and clothing having kerosene smelling burns about 100%".

11. From the panchnama, it further transpires that investigating agency found "one empty container having kerosene smell" from the place of incident. Similarly, the soil of the surface of the hut (the place of incident) was having smell of kerosene. Thus, the aforesaid document also corroborates the version given by the deceased before the independent witness, i.e. PW-3, the Doctor. At this stage, it is also relevant to observe that PW-3 deposed before the court that the son of the deceased, aged about 4 years, was brought before him by the relatives of the deceased and when inquired they told that the said boy sustained burn injuries along with his mother. It is further stated by the said witness that the said boy sustained 10-12% burn injuries on his lower legs and feet. Thus, from the aforesaid evidence led by the prosecution, it is revealed that the dying declaration given by the deceased before the Doctor is supported by other evidence led by the prosecution.

12. On perusal, it is clear that the deceased sustained 100% burn injuries and from the whole body and the clothes of the deceased, the smell of kerosene was found. However, the 4 years old son of the deceased was sleeping beside the deceased and he sustained only 10-12% burn injuries. Thus, the theory of accidental fire at the place of incident put forward by the appellant/accused cannot be believed.

13. We are of the view that merely because there are minor discrepancies in the version given by the prosecution witness with regard to the dying declaration and with regard to the manner of occurrence of the incident, the first dying declaration given by the deceased before the independent witness, i.e PW-3, cannot be ignored. The first dying declaration is supported by the independent documentary evidence, and therefore, the High Court has rightly placed reliance upon the decision rendered by this Court in the case of ***Nallam Veera Stayanandam & Ors. v. Public Prosecutor, High Court of A.P., (2004) 10 SCC 769***, and thereby, rightly set aside the order of acquittal rendered by the trial court *qua* the appellant/accused.

14. We are also of the view that on the basis of the aforesaid evidence as discussed hereinabove, only one view was possible, despite which, the trial court had acquitted the appellant/accused. Thus, the High Court has rightly set aside the order of the trial court.

15. In view of the aforesaid facts and circumstances of the present case set out in the detailed analysis above, we are of the view that no interference is required in the impugned judgment passed by the High Court in Criminal Appeal Number 539 of 2006. Accordingly, the present appeal stands dismissed.

.....J.
[RAJESH BINDAL]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI,
OCTOBER 29, 2025.