



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2543 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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STATE OF GUJARAT

Versus

YOGESHKUMAR MANGALDAS SUTHAR & ORS.

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Appearance:

MS JYOTI BHATT APP for the Appellant(s) No. 1

KUMAR H TRIVEDI(9364) for the Respondent(s) No. 1,2,3,4

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CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 02/09/2026

ORAL JUDGMENT

CHALLENGE :

1. The present appeal is filed by the appellant – State of Gujarat under Section 378(1)(3) of the Criminal Procedure Code against the impugned judgment and order dated 09.09.2009 passed by the learned Additional Sessions Judge, Third Fast Track Court, Himmatnagar Camp at Idar (hereinafter referred to as “the trial Court”) in Sessions Case No.157 of 2008 whereby the trial Court acquitted the accused from the charges levelled against the accused for the offences punishable under Section 498A, 323, 306, 114 etc of



the Indian Penal Code.

FACTS OF THE CASE :

2. Brief facts of the present case are, in nutshell, as under:-

2.1 It is the case of the prosecution that younger sister of complainant namely Parul married to accused No.1 in the year 1995 and out of the said wedlock, she delivered two children viz. one daughter namely Palak and one son namely Tarang and initially the marriage life of husband and wife was going on smoothly for a period of seven years. It is alleged that thereafter, accused No.1 subjected mental and physical torture to Parul and other accused instigated him and whenever, Parul visited the residence of the complainant, she complained about ill-treatment at the hands of accused No.1 and children also informed about the mental and physical torture to the complainant. It is also alleged that prior to one month, Parul came to the residence of the complainant as she was severely beaten by accused No.1, however, Parul was persuaded at the residence of accused to save her matrimonial life, but mental and physical harassment was continued at the hands of the accused. It is further alleged that on account of mental and physical harassment and torture on the part of accused No.1, she committed suicide by sprinkling kerosene on her and children and ignited herself along with the children, due to which, they succumbed to the injuries.

3. A complaint came to be registered as C.R.No.I-47 of 2008 at Jadar Police Station for the aforesaid offences. During the investigation, the accused was arrested.



4. After completion of investigation, as the sufficient evidence was found, the police has arrested the accused and has filed the charge-sheet against the accused before the Judicial Magistrate (First Class), Patan wherein it was registered as Criminal Case No.1905 of 2008. As the offence was triable by the Court of Sessions, the Judicial Magistrate (First Class) has committed the case under Section 209 of the Criminal Procedure Code to the Court of Sessions wherein it has been registered as Sessions Case No.157 of 2008.

5. The charge against the accused came to be framed by the trial Court vide Exhibit 3 for the aforesaid offences. On being explained it to them, the accused pleaded not guilty to the charge and pleaded for trial. Hence, the case was tried by the trial Court.

6. It appears from the records that the prosecution has examined the following witnesses:-

P.W.1	Jaiminbhai Babulal Suthar	Exhibit 10
P.W.2	Babubhai Revabhai Suthar	Exhibit 13
P.W.3	Arunaben Babulal Suthar	Exhibit 15
P.W.4	Dilipkumar Kantilal Suthar	Exhibit 16
P.W.5	Rajendrakumar Kalidas Varma	Exhibit 23
P.W.6	Dr. Pankajkumar Himatsinh Katara	Exhibit 27
P.W.7	Dr.Kalpnaben Dilipkumar Chauhan	Exhibit 33
P.W.8	Pravinbhai Kacharabhai Vankar	Exhibit 39
P.W.9	Manharbhai Maganbhai	Exhibit 43
P.W.10	Kanabhai Hirabhai	Exhibit 49



P.W.11	Keshabhai Poojabhai Patel	Exhibit 51
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7. The defence has also examined the witness namely D.W.1 Dr. Amrut Satramdas Bodani at Exhibit No. 65.

8. In addition to this, the prosecution has also produced the following documentary evidence:-

Sr.No	Particular	Exhibit
1	Original complaint	11
2	Panchnama of the scene of offence	18
3	Inquest panchnama	19
4	Panchnama of sample seized from the scene of offence	20
5	Panchnama of the physical condition of the accused	21
6	Cause of death certificate	30
7	P.M. report	31
8	Primary opinion of the FSL	58
9	Forwarding note for sending muddamal to the FSL	59
10	Receipt of the FSL with regard to receiving muddamal	60, 61
11	Opinion of the FSL	62
12	Note of telephone vardhi	53
13	List and the order passed thereon	56
14	Notification given by Mangaldas	54
15	Note/ List	55
16	Yadi for filling up inquest	52
17	Jadar Out F.T.P.	57
18	Receipt for giving deadbody	14
19	List of ornaments	12
20	Inquest panchnama	22
21	Medical certificate of Tarangbhai	24
22	Case paper of Tarangbhai	25
23	Case paper of Palakben	26
24	Yadi written for preparing postmortem	28
25	Police report to be sent to the Civil Surgeon along with the dead body kept for postmortem	29



	examination	
26	Form to be used for preparing the postmortem examination report when sending the viscera for examination	32
27	Yadi written by the Investigating Officer to Medical Officer	34
28	Police report of sending body to Civil Surgeon along with body sent for postmortem examination	35
29	Medical certificate of Palakben	36
30	Yadi with regard to examination of the deadbody	37
31	Yadi written by PSO to the Executive Magistrate	40
32	Dying declaration	41
33	Yadi written for giving copy of D.D.B.	42
34	Statement of Palakben before A.H.C.	44
35	Telephone Vardhi	45, 46
36	Note / List	47
37	Copy of station diary	50
38	Yadi for filling up the inquest	52
39	Note / List	56

9. After closure of the evidence, the statement of the accused under section 313 of the Criminal Procedure Code, 1973 has been recorded wherein they denied of having committed any offence and have stated that they are innocent.

10. After hearing both sides and considering the evidence on record, the Trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against them.

11. Heard Ms.Jyoti Bhatt, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat and Mr.Kumar Trivedi, learned counsel appearing for respondents at length. Mr.Trivedi, learned counsel has submitted that during the pendency of the appeal, accused No.2 – Mangaldas Dalsukhram Suthar has expired for which he has tendered a copy of the death certificate which is taken



on record. The appeal qua accused No.2 stands abated accordingly.

SUBMISSIONS ON BEHALF OF THE APPELLANT - STATE OF GUJARAT:

12. Ms.Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal. She has taken through the relevant evidence of the witnesses and the documentary evidence to this Court and submitted that the impugned judgment and order is illegal, unjust and against the facts of the case. She has submitted that the prosecution witnesses have supported the case of the prosecution, however, the trial Court, without appreciating the evidence of the witnesses, has committed an error in discarding the evidence of the witnesses and, therefore, the judgment and order deserves to be quashed and set aside. She has also submitted that the ingredients of Sections 498(A) and 306 of the IPC are attracted, however, the trial Court has not considered the same and committed an error of facts and law in passing the acquittal order. She has submitted that the prosecution has established the fact that there was constant mental and physical harassment at the hands of accused, for which accused No.2 to 4 instigated accused No.1 and the sufficient evidence produced on record to prove the guilt of the accused. She has submitted that the independent witnesses have supported the case of the prosecution and the corroborative evidence of the deceased was not considered by the trial Court while passing the impugned judgment and order of acquittal. She has submitted that though the prosecution has produced the relevant documentary evidence in support of the case, but the trial Court has discarded the same. She has submitted that



the trial Court has disbelieved the case of the prosecution on the ground that the relatives of the deceased have not supported the case of the prosecution and also not appreciated the evidence in the form of dying declaration, panchnama etc. She has submitted that the trial Court has failed to appreciate the fact that the muddamal was recovered from the accused, therefore, the trial Court ought to have convict the accused for the charges levelled against them.

12.1 Ms.Bhatt, learned Additional Public Prosecutor has submitted that though there was ample evidence produced by the prosecution with regard to involvement of the accused in the crime in question, however, the trial Court has failed to appreciate the oral as well as documentary evidence. She has submitted that the trial Court ought to have appreciated the evidence in the nature of dying declaration at Exhibit 41 of of Palak (daughter of respondent No.1 and grand-daughter of respondent No.2 and niece of respondent Nos.3 and 4) recorded by the Executive Magistrate and if statement recorded under Section 161 of the Cr.P.C. was considered to be dying declaration wherein the deceased Palak specifically stated that though there was a dispute between her mother Parulben and respondent No.1, they were quarreling and during the quarrel, accused No.1 had beaten the deceased Parulben being mother of deceased Palak. She has submitted that they left the Ahmedabd and her maternal uncle being complainant who dropped his sister namely Parulben with her both children at her in-laws place i.e. respondent No.2 who was retired teacher and stayed at Village: Daramli, Taluka: Idar, District : Samarkantha where on 19.08.2008 in early hours, she was pouring kerosene on children and set them fire and, thereafter, she herself pouring kerosene and set at ablaze, due to which Parul



(wife of accused No.1) and Palak i.e. daughter of Parul and accused No.1 died and son Tarang i.e. of Parul and accused No.1 sustained serious burn injury who was not at present living with accused No.1 and prosecuting his study in master of B.H.M.S. She has submitted that though the said evidence reveals involvement of the accused in the alleged crime, the trial Court discarded the said piece of evidence on the ground that the said documents namely dying declaration and the statement under Section 161 did not inspire any confidence and not find truthful. She has submitted that at the time of death of wife and daughter, accused No.1 was not remained present as the dead bodies were received by the grandfather i.e. accused No.2 and father of deceased Parul. It is submitted that in cremation ceremony, accused No.1 was not remained present, of course, the complainant and his family were also not remained present in in cremation ceremony took place at Village: Daramli, however, the conduct of accused No.1 requires to be seen that he lost his wife and daughter, despite this, he did not remain present either at the place. That the postmortem of wife and daughter were performed at two different places and therefore accused No.1 was was required to be held guilty and liable for the alleged incident, however, the said aspect has not been properly appreciated and considered by the trial Court.

12.2 In support of her submissions, Ms.Bhatt, learned Additional Public Prosecutor has relied upon the decision of the Hon'ble Supreme Court in the case of **Laxman Vs. State of Maharashtra** reported in **(2002) 6 SCC 710** wherein the Hon'ble Supreme Court has observed that merely dying declaration recorded by the Executive Magistrate is not certified by the doctor or not having any endorsement with regard to the mental condition of the deponent, the dying declaration cannot



be ignored with regard to acceptability of the dying declaration. She has also relied upon the subsequent decision of the Coordinate Bench of this Court in the case of **State of Gujarat Vs. Chhaganbhai Kaliyabhai Bhabhor** reported in **2024 (0) JX (Guj) 1289**.

12.3 Ms.Bhatt, learned Additional Public Prosecutor has urged that the appeal deserves to be allowed and the impugned judgment and order of acquittal deserves to be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS - ACCUSED:

13. Mr.Trivedi, learned counsel appearing on behalf of the respondents - accused has submitted that the trial Court has not committed any error of facts and law in passing the impugned judgment and order of acquittal in favour of the accused. He has submitted that there is material contradiction in both the dying declaration recorded by the Investigating Officers with regard to the cause of death and with regard to the allegation of mental and physical torture. He has submitted that the dying declaration in the form of FIR and the dying declaration recorded by the concerned Investigating Officer there is material contradiction which goes to the route of the matter and, therefore, the trial Court has rightly passed the impugned judgment and order of acquittal. He has submitted that the marriage span of more than twelve years and out of the said wedlock, they have two children and during these years there was not a single iota of evidence with regard to the allegation made in the dying declarations and no any complaint made by the deceased before any of the family members. He has submitted that the impugned judgment and order passed by the trial Court is in



consonance with the facts of the case and in consonance with the settled legal principles pronounced by the Hon'ble Supreme Court and thus, the impugned judgment and order of acquittal is required to be confirmed and the appeal being meritless deserves to be dismissed.

13.2 Mr.Trivedi, learned counsel has submitted that deceased Parul married to accused No.1 before about 12 years and their marriage span was for more than 12 years and during the wedlock, Parul delivered two children namely Palak and Tarang and the marriage life of the husband and wife was going on smoothly and after some time, the dispute took place between the accused. He has submitted that on 18.08.2008 in the intervention of accused No.2, deceased Parul with two children dropped at Village: Daramli by P.W.1 and in the night of 18.08.2008, the deceased Parul committed such offence and, therefore, at the time of incident accused No.1 was not present. He has submitted that so far as accused No.2 against whom the deceased Palak attracted is concerned, on the date of incident, there was hit of exchange between father-in-law and daughter-in-law i.e. respondent No.2 and deceased Parul. He has submitted that deceased Palak was suffering from major depression for which she was treated at Ahmedabad by Dr. Amrut Santramdas Bodani and she was referred by Dr. Atulbhai, family physician of accused No.1 and from the medical papers more particularly document at Exhibit 67 wherein it was stated that deceased Palak was suffering from major depressive disorder. He has submitted that the said fact was not brought to the notice of the Court below by the prosecution and, therefore, the defence has examined the said doctor as D.W.1 and through his evidence the said fact was brought on record. He has submitted that deceased Parul time and again quarreled with accused



No.1 and even the accused No.1 was taking deceased to the doctor and some time the complainant No.1 was also accompanied with deceased Parul visiting the doctor.

13.4 Over-and-above the aforesaid oral arguments, Mr.Trivedi, learned counsel has made the following arguments :-

1. The trial Court below has rightly observed that there is absence of intention to commit crime on part of accused persons and *means rea* on part of accused persons.
2. The trial Court below has rightly observed that in marriage span of 13 years between Parulben and Yogeshkumar there was not a single complaint of harassment and all the prosecution witness have failed to point out even one instance of quarrel or harassment, which the trial Court rightly declined to elevate into "cruelty" within the meaning of Section 498A IPC.
3. Family of the complainant consists of his parents (PW-02 & 03), his wife (not examined) and elder brother Utpalbhai (not examined), Utpalbhai's Wife (Not examined) all these persons used to live as joint family, within 10 minutes distance of the house of the Parulben. (another sister of complaint namely Pratibhaben is also not examined, however her husband Dilipbhai is examined as PW-04). Also, Complainant belongs to Suthar community, which has its own constitution and during the marriage span of 13 years no complaint was ever made to the leaders of community.



4. It is Duty of prosecution to prove case beyond reasonable doubt and in present case the respondent were acquitted by the Ld. Trial court hence the present respondents have double presumption in their favour.

5. Dispute regarding Ornaments and Streedhan is reason for FIR:

Learned trial Judge has rightly concluded that the FIR is an afterthought as Exh.12 list was given by the P.W.1 to the respondent No.2 on 19.08.2008 and on same day the respondents could not give the ornaments back to the complainant hence from 11:00 am to 06:00 pm, complainant waited for the ornaments and when the ornament on same day were not given to him he did not let any of his relatives attain last rites of the deceased and also later decided to lodge FIR and the said fact is evident from the deposition of PW1 wherein he has specifically stated that respondent No.2 did not act as per his liking hence FIR was filed.

P.W.1 deposed that due to societal norms he did not attend the rites of the Palakben and Parulben, however from the deposition of PW-2 it is evident that there was no specific reason to not to attend last rites rituals, thus it is evident that only reason to not attend last rites and post rites ritual was property dispute. Hence learned trial Judge was right to conclude that FIR is an afterthought.

6. The trial Judge has rightly not considered Dying Declaration of



Palakben, as from the perusal of Dying Declarations at Exhibit 41 and 44 and depositions of P.Ws it is evident that:

PW-1 met victim Tarang and had conversation with him however witness did not have any conversation with Palak (which confirms that the Palak was unconscious and was not able to speak).

PW-1 states that Dilipkumar (PW-4) came first to Hospital, however from the deposition of PW-4 it is evident that he did not have any conversation with children hence it is proved that victim palak was not in any condition to speak.

PW-1 deposed that for all the time Palak took treatment, atleast one of the relatives were constantly with her, thus statement of Palak is tutored and not natural and also words were put into her mouth.

PW-5 deposed that Palak sustained 100% burn and 2 to 4 Degree burns and was in no condition to speak during treatment and also has specifically admitted that Palak was in no condition to give any statement.

Case papers produced by the PW-5 clearly indicated that the Palak was under heavy medication and also on 'Oxygen Flow'.

From the perusal of DDs it is evident that both the DDs

* do not have Endorsement of Doctor,



- * do not have Fitness Certificate of Palakben issued by Doctor,
 - * do not have Endorsement of Nurse (as Nurse was present during DD reflected in PW-8),
 - * do not have endorsement of consciousness or able-ness of victim,
 - * do not have videography of statement
 - * Thumb impression of Palak is taken at bottom of DD, however no ink is found on thumb of victim Palak in inquest or PM.
 - * In whose presence thumb was taken is not reflected.
- From the Perusal of Language and contents of both the DDs it creates doubt on genuineness of DD:
- * It is highly improbable that 12-year-old victim will use such vocabulary and sentences.
 - * It is not in question-answer form.
 - * Language of DD suggest that 12-year-old and 7-year-old child along with mother took decision of committing suicide which is highly improbably as contrary to history given by Taral to Doctor.
 - * Also, language of DDs appears to be answers to a leading questions and not natural language of victim herself.
 - * Also, language suggests that words were put into mouth of the Palak and were leading.
 - * Palak in statement is alleged to have stated that "it is true that there was some verbal argument with the respondent No.02" which itself suggest that words were put in the mouth of the child.
 - * Palak in statement is alleged to have stated that "it is true that



there was regular scuffle with the father" which itself suggest that words were put in the mouth of the child.

- Even if the DDs at Exh 41 and 44 are accepted allegation levelled in the said DDs are general in nature and also there are no allegations against respondent No. 01, 03 and 04.

7. Both the families had very cordial relations with each other and until the 2 days before the incident i.e. on 16.08.2008 (on Rakshabandhan) Prulben along with her family has spent her whole day at the House of Complainant, also Pws in there deposition accepts that they regularly used to visit the house of Parulben and Parulben regularly used to visit their house during the course of 13 years of marriage span. Thus, the allegations of cruelty and harassment is not supported by the evidence.

8. That the prosecution has attempted to suppress the evidence collected during the course of investigation and also fair and proper investigation is not conducted by the Investigating Officer and from the perusal of the evidence it is evident that:

- * Immediate neighbours Shantaben, Pravibhal, Mukeshbhai, Jagrutiben and other neighbours are not examined by the IO. (hence it is evident that none of the witnesses have supported claim of the complainant).
- * From the perusal of 'Telephone vardhi' at Exh 45, it is evident that Ld. Doctor has informed that 2 burns victims namely Palak and Tarang are admitted in the Hospital (however no



statement of Tarang is produced).

- * From perusal of 'Telephone vardhi' at Exh 46, it is evident that Ld. Doctor namely Rita Sinha has informed that Palak has scummed to death. (However Dr. Rita Sinha has not been examined by prosecution)
 - * From perusal at Exh-47, it is evident that said is a 'Suchipatra' about the AD No, 0/08 CrPC 174, said AD was registered on the basis information provided by Dr. Rita Sinha and the investigation was deputed to H.C. Hargovindbhai Prabhatbhai. (However Dr. Rita Sinha and H.C. Hargovindbhai Prabhatbhai were not examined and not cited as witness)
 - * Best witnesses Tarang and all neighbors; non are examined by prosecution.
 - * IO admits that he has taken statement of Neighbors of Parulben at Ahmedabad and Daramli and Neighbors say no quarrel between Paraulben and Yogeshbhai took place.
 - * FIR against deceased Parul for murder of Palak was registered and as Parulben had died said was abetted.
9. Incident has taken place at Village: Daramli and It was respondent No.02 who took all the victims at hospital and called the respondent No.01 and complainant and his family members. (108 ambulance in which children where brought, no DD or history was taken in 108 ambulance.)
10. No complaint of cruelty of any kind was lodged at any time during the subsistence of the marriage not to the police, not to family elders.



11. All the witness in deposition stated that between the incident and FIR they have given information to Police at Himatnagar Civil Hospital and at place of incident at Daramli, witnesses have given statements to the Police pursuant to AD Case inquiry at EXH-47 and also pursuant to information at Exh 54 and said was registered as Jadar AD 15/2008 CrPC 174 and the said statements have not been produced and said investigation was suppressed by the prosecution. All the investigation conducted under AD Case has been suppressed and not produced by prosecution hence the said trial is an unfair trial.
12. Omnibus implication of Respondent Nos. 3 and 4 married daughters of the family admittedly residing separately at their own matrimonial homes and not a single specific act or allegation is attributed to either of them individually.
13. Independent, unrebutted medical (psychiatric) evidence of DW-1 establishing a pre-existing depressive illness in the deceased, which clearly explain the sudden unwarranted act of suicide by Parulben and taking the life of Palakben with her, thus the Ld. Judge has rightly come to conclusion that offence as charged is not made out and accused persons are required to be acquitted.

DECISIONS RELIED UPON ON BEHALF OF THE RESPONDENTS:

13.5 In support of his submissions, Mr.Trivedi, learned counsel has relied upon the following decisions of the Hon'ble Supreme Court as



well as this Court:-

- (1) Mariano Anto Bruna Vs. Inspector of Police, (2023) 15 SCC 560;
- (2) Dr.Sunil Kumar Sambhudayal Gupta Vs. State of Maharashtra, (2010) 13 SCC 657;
- (3) Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 SCC 618;
- (4) Irfan @ Naka Vs. State of Uttar Pradesh, 2023 (11) Scale 477;
- (5) Nipun Aneja Vs. State of Uttar Pradesh, 2025 (1) ALT (Cri) SC 113;
- (6) Yaddnapudi Madhusudhana Rao Vs. State of Andhra Pradesh, 2023 JX (SC) 1299;
- (7) Jaydeepsinh Pravinsinh Chavda and others Vs. State of Gujarat, (2025) 2 SCC 116;
- (8) Amalendu Pal @ Jhantu Vs. State of West Bengal, (2010) 1 SCC 707;
- (9) State of Gujarat Vs. Ashokbhai Kanjibhai Choral, Criminal Appeal No. 975 of 2024;
- (10) State of Gujarat Vs. Vaniya Mukeshkumar Jethalal, 2024 (0) JX (Guj) 1398;
- (11) Rameshbhai Popatbhai Vs. State of Gujarat, 2016 (0) JX (Guj) 251;
- (12) Sanjaykumar Shantilal Panchal Vs. State of Gujarat, 2016 (0) JX (Guj) 309;
- (13) Shantuben W/o. Lalji Nanji Vs. State of Gujarat, 2025 (0) JX (Guj) 1632;
- (14) State of Gujarat Vs. Mahobatsinh Narendrasinh Jadeja, 2024 (0) JX (Guj) 1692;
- (15) State of Gujarat Vs. Anvar Kara Budha (Miyana) & Ors. Criminal Appeal No. 1746 of 2008;

**ANALYSIS:**

14. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the questions arise for determination are as under:-

- (1) whether the trial Court has rightly justified in passing the judgment and order of acquittal.
- (2) whether the trial Court has failed to appreciate the evidence oral as well as documentary led by the prosecution in recording the reasons.
- (3) whether the trial Court has failed to appreciate the documents i.e. dying declaration of Palak and statement under Section 161 recorded by the Police Officer at Exhibit 44.
- (4) whether there are any illegality, irregularity and perversity in the impugned judgment and order of acquittal.

CONCLUSIONS :

15. Considering the aforesaid submissions and the aspects involved, this Court is first required to examine the facts of the case. The deceased, Parul, married to accused No.1 about twelve years prior to the incident. During the subsistence of the marriage, the deceased, along with her husband and two children, initially, resided in rented premises at Ahmedabad and, thereafter, they purchased their own house and started residing therein. During the wedlock, deceased Parul gave birth to two children, namely, daughter Palak and son Tarang. It is further the case of the prosecution that, initially, the matrimonial life of deceased Parul with accused No.1 was going



on smoothly; however, after about six to seven years, disputes arose between the husband and wife, on account of which, deceased Parul was allegedly subjected to mental and physical harassment by accused Nos.1 and 2. That accused No.2 was serving as a teacher at Village Daramli and, after his retirement, he was residing at Village Daramli along with his wife. He had one son and four daughters, all were married and residing at their respective matrimonial homes. Out of the four daughters, two daughters were joined as respondents-accused in the complaint. That about two days prior to the incident, on the eve of Rakshabandhan, accused No.1, along with his wife and children, was at the house of the complainant. The complainant and his two real brother and sister were residing in the same vicinity and Utpalbai, the younger brother of P.W.1, was also residing nearby along with his wife. Thereafter, on 18.08.2008, a quarrel took place between the husband and wife and consequently, daughter Palak informed P.W.1, who was her maternal uncle, that her father and mother were quarrelling and requested him to come to their house. Accordingly, P.W.1 reached the house of accused No.1. Thereafter, the deceased, along with her children, was taken to Village Daramli and dropped there by the complainant. During the night of 18.08.2008 and in the early hours of 19.08.2008, deceased Parul allegedly poured kerosene on herself and her children and set herself and the children ablaze. As a result, Palak sustained burn injuries and was taken to Sar Pratap General Hospital at Himmatnagar. At that time, accused No.2 reported the incident as an accidental death, and the same was referred to Himmatnagar "A" Division Police Station. That during treatment, Palak succumbed to her injuries, whereas, Tarang survived and he was thereafter residing with accused No.1 and pursuing his studies at BMNS. In connection with the incident, the



investigation was carried out. The accused No.2 informed the complainant about the incident over the telephone, whereupon the complainant, along with his family members, immediately reached at Village Daramli, where deceased Parul was found lying injured. Upon inquiry, the complainant lodged the complaint against the accused. However, the role of accused Nos.3 and 4 was not described at all in the complaint, though they were subsequently arraigned as accused in the alleged offence. Now, on perusal of the documents, namely, the dying declaration at Exhibit 41 and the statement of deceased Palak at Exhibit 44, it emerges that deceased Palak had stated as under:

***“Exhibit - 41
Dying Declaration***

Date: 19/08/2008

My name is Palak Yogeshbhai Suthar, Age: 12 years, Occupation: Student, Standard-7, Ahmedabad, Naroda.

Today on being asked in person and upon given introduction as Executive Magistrate and on being asked further I state that I am under treatment at Civil Hospital, Himmatnagar and in conscious condition.

On being further asked regarding the incident I state that an altercation occurred between my father and mother in our home at Ahmedabad and because of the altercation/quarrel, three of us including me along with my mother and Tarang, my younger brother came to Daramli. My mother came to Daramli.

Thereafter she talked to my grandfather and to the elder brother of my father on telephone regarding divorce and it was heard by me. That conversation took place with my mother and mild altercation had occurred with my grandfather at Daramli and such fact is true.

Me along with my mother and my brother were sleeping at our home at Daramli. In between 3:00 to 4:00 hours in the morning, my mother and we all took the decision to pour



kerosene and to kill ourselves.

Therefore we poured kerosene and as my mother lit the matchstick, fire took place. This fact is true. The fact is true that because of the repeated quarrels between my father and mother, permanent quarrels used to occur, therefore because of the dispute my mother took this step."

Exhibit - 44

Date: 19/08/2008

My name is Palakben D/o Yogeshbhai Mangaldas Suthar, Age: 12 years, Occupation: Student, Residing at Daramli, Taluka Idar.

On being asked in person I state that I reside at the aforementioned address with my mother and father and I am a student of standard-7.

Today, at approximately 4:00 a.m., my mother, Parulben, for some reason, poured kerosene over me, my younger brother Tarang, aged about 7 years, and upon herself. She then struck a matchstick and set fire to the clothes we were wearing.

Therefore, all three of us began to burn inside our house. My mother had locked the door of the house from the inside. My brother and I screamed for help to save our lives, therefore the neighbors residing nearby broke open the door, poured water over us and extinguished the fire.

Among the neighbors who came to our rescue us was Magandada Barot; apart from him, I do not recognize the others. Due to the constant harassment inflicted upon us by my grandfather, Mangaldas, my mother poured kerosene on the three of us, set my brother and me on fire, and immolated herself. At present, I am fully conscious and in a fit state of mind.

This statement of facts has been recorded exactly as dictated by me, and the same is true and correct."

16. On perusal of the evidence of P.W.5, Dr. Rajendrakumar Kalidas Varma, at Exhibit 23, as well as the contents of the dying declaration and the statement recorded by the Investigating Officer, it emerges



that the role attributed to accused Nos.1 and 2 cannot be said to constitute instigation or abetment as contemplated under Sections 306, 498A and 107 of the IPC.

17. P.W.1, Jaiminbhai Babulal Suthar, the complainant and brother of the deceased, was examined by the prosecution at Exhibit 10 and was cross-examined at length by the defence. From his cross-examination, certain facts have emerged. Some family members were present with deceased Palak, while some of them went to Village Daramli. Before proceeding to Village Daramli, they had approached Jadar Police Station for registration of the complaint; however, at that time, the complaint was not registered, and it was subsequently lodged by P.W.1. In his cross-examination, P.W.1 admitted that his real brother, Utpalbhai, along with his wife and family, was residing nearby, along with other relatives, who were also residing in the vicinity of the village. He further admitted that none of the family members of accused No.1 was residing in that area. He also admitted that, about two days prior to the incident, all of them were present on the occasion of Rakshabandhan and had happily celebrated the festival. P.W.1 further admitted that, according to the custom prevailing in their community, if the family members did not wish to maintain relations with their son-in-law, i.e. accused No.1, they would not attend the cremation ceremony or visit the crematorium. He further stated that, since the conduct of accused No.1 and his family members was not according to the expectations of the complainant, P.W.1 lodged the complaint against the accused. The relevant contents of the deposition of P.W.1 reads as under:

"It is true that from the time we went to Daramli until the cremation rites, the relatives of Mangaldas did not provide



any support or cooperation, and, therefore, we lodged a complaint regarding the incident. If Mangaldas and his relatives had supported and cooperated with us from the morning and had remained favourable towards us, perhaps we would not have lodged the complaint.

Since the members of the community told us not to go to the funeral, we did not go. We did not want to maintain relation with Yogeshkumar, and therefore, we did not attend the last rites. With regard to the clothes and ornaments of my sister Parulben, discussion had taken place through the community leaders regarding the matter after about five or six months of the incident. It is not true that on 19.08.2008 a discussion had taken place regarding taking away my sister Parul's clothes and household ornaments through the members of the community."

17.1 Looking to the evidence of P.W.1, exaggerations and omissions are found in his deposition. This witness admitted that, if the accused had acceded to their demand for settlement of the dispute by returning the dowry articles, the FIR would not have been lodged. However, since the accused did not agree to their demand, the complaint came to be lodged by P.W.1.

18. Now, in light of the above evidence and considering the deposition of the father of deceased Parul, i.e. P.W.2, it emerges that certain contradictions and omissions were found in his evidence, as noticed by the learned trial Court during the course of examination. Similarly, on considering the evidence of the mother of deceased Parul, i.e. P.W.3, it appears that she admitted that, on 18.08.2008, when deceased Parul was not ready and willing to go to her parental home, she instead chose to go to her in-laws' house at Village Daramli. She also admitted that, according to the custom prevailing in their community, if a person became a widower and intended to remarry, he would not attend the cremation ceremony. It is further



admitted that the accused were present at the house and attended the last rites and rituals of deceased Parul and Palak.

19. In light of the evidence of Dr. Rajendrakumar Kalidas Varma at Exhibit 23, it appears that, when the injured were brought to the hospital by their grandfather, i.e. accused No.2, Tarang gave a history that his mother Parul, had sprinkled kerosene on herself and the children and set them ablaze. The said witness deposed that deceased Palak was not in a position to speak, as she had sustained approximately 90% to 95% burn injuries. On perusal of the medical papers relating to deceased Palak, it appears that she was on oxygen and, under such circumstances, the concerned doctor deposed that deceased Palak was not in a position to speak.

20. On examination and scrutiny of the evidence of the aforesaid three witnesses, namely, the brother and parents of deceased Parul, it appears that there was no specific allegation that the accused had, in any manner, subjected the mental or physical cruelty to deceased Parul. From the material available on record, it further emerges that the medical history of the deceased was brought on record. The deceased had previously undergone treatment for kidney stones and, after meeting with an accident, she had sustained an injury on her head and was also suffering from mental illness. All these facts were brought on record by the defence. Under such circumstances, the learned trial Court considered the depositions of the witnesses and recorded its reasons in paragraph 23. The trial Court also considered the provisions of Sections 498A, 306 and 107 of the IPC and, after referring to the decisions of the Hon'ble Supreme Court as well as this Court, passed the impugned judgment and order of acquittal. In view



of the aforesaid discussion and considering the evidence available on record, I am of the opinion that the learned trial Court has not committed any error of fact or law in passing the impugned judgment and order. No illegality or infirmity is found in the judgment and order passed by the learned trial Court.

21. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

22. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court



has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which they are charged.

23. It is hereby noted that so far as the ratio laid down by the Hon'ble Supreme Court in the case of **Laxman** (supra) is concerned, there is no other opinion with regard to the acceptability of the dying declaration as a valid and true evidence. In the present case, in none of the dying declaration, the prosecution has established that both the witnesses have not taken care to get endorsement of the doctor nor the doctor has deposed that he has concealed with regard to the mental and physical condition of the patient. Though the doctor was available, the police witnesses have deposed that the concerned witnesses have not consulted with the doctor at the time of recording the statement of the deceased in the nature of dying declaration. Therefore, the decision of the Hon'ble Supreme Court referred to and relied upon by the learned Additional Public Prosecutor is not helpful to the facts of the present case. In fact, the ratio laid down by the Hon'ble Apex Court that in case of different dying declaration, the acceptability of dying declaration as evidence is required to be proved beyond reasonable doubt by the prosecution, however, the same has not been done in the present case.

24. In case of **Irfan alias Naka Vs. State of Uttar Pradesh** reported in **AIR 2023 SC 4129**, the Hon'ble Supreme Court has,



while dealing general principles, observed in para – 62 as under:-

“62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying persons imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?”



25. In the case of **Rajaram Vs. State of Madhya Pradesh and others** reported in **AIR 2023 SC 94**, the Division Bench of this Court has decided the issue with regard to the multiple dying declaration and in the case of **Pawan Kumar Vs. State Of Himachal Pradesh** reported in **(2017) 7 SCC 780**, the Hon'ble Supreme Court has held that a certificate of fitness is not the requirement of law. That there cannot be an absolute rule that a person who has suffered 80% burn injuries cannot give a dying declaration. The person is said to have instigated to another person who has a supportive to an act by any means direct or indirect whether it takes the form of express conciliation or solely simultaneous or encouragement instigation may be words or may be in conduct. In the present case, there is no any material on record which suggests that there is an instigation on behalf of the accused No.2, 3 and 4 to deceased to commit the suicide. In the case of **Rajendra S/o. Ramdas Kolhe Vs. State of Maharashtra** reported **AIR 2024 SC 2682** the Hon'ble Supreme Court has held and observed in paras – 25 to 29 as under:-

“25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

26. Section 32(1) of the Indian Evidence Act, 1872 deals with dying declaration. Since the said provision is relevant, it is extracted hereunder:

[32.] Cases in which statement of relevant fact by person



who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

26.1 . Section 32 says that statements made by a person who is dead or who cannot be found etc., be it in written form or oral, are themselves relevant facts. As per situation(1), when the relevant facts relate to the cause of death, such a statement would be relevant whether the person who made it was or was not at the time of making the statement under expectation of death. Such a statement would be relevant whatever may be the nature of the proceedings in which the cause of his death comes into question. The relevancy is not confined to the cause of his death but also to the circumstances of the transaction which resulted in his death.

*27. In **Khushal Rao vs. State of Bombay, AIR 1958 SC 22** this Court examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and various judicial pronouncements, this Court laid down the following conclusions:*

(i) it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying



declaration was made;

(iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

(v) a dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

28. The above conclusions were reiterated by this Court in **Paniben (Smt.) vs. State of Gujarat, (1992) 2 SCC 474**. This Court declared that there is neither any rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration. However, the court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination; the deceased should be in a fit and proper state to make the declaration. But once the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

29. This Court highlighted the significance of a dying declaration in **Kundula Bala Subrahmanyam vs. State of Andhra Pradesh, (1993) 2 SCC 684**. The general rule is that hearsay evidence is not admissible. Unless the evidence tendered is tested by cross-examination, it is not creditworthy. However, Section 32(1) of the Evidence Act is an exception to this general rule. This Court observed as under:

18.* * * * * A dying declaration made by 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 shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. 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 the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a 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. * * * * **

26. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court in the case of **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, we are in complete agreement with the findings recorded by the trial Court.

27. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble



Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential



for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

28. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record. Under these circumstances, both the evidence i.e. dying declaration at Exhibit 41 and statement at Exhibit 44 are created serious doubt and, therefore the view taken by the trial Court is in consonance with the settled principle of law.

29. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.



30. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHAK,J)

V.R. PANCHAL