

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 371 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Approved for Reporting	Yes	No

IMTIAZHUSSEIN @ BHAYLU MOHAMMED SIRAJ KHOKHAR
Versus
STATE OF GUJARAT

Appearance:

MR MM TIRMIZI(1117) for the Appellant(s) No. 1
MR BHARGHAV PANDYA, APP for the Opponent(s)/Respondent(s)
No. 1

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 03/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of conviction dated 09.01.2013 passed by the learned Sessions Judge, Kheda at Nadiad in Sessions Case No.96/2011 convicting the respondent-accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 and sentencing him to rigorous imprisonment for life and fine, the appellant-accused has preferred the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. As per the prosecution case, on 08.05.2011 at around 8:30 PM near Khatraj Darwaja area, Mehmdabad, the accused Imtiyazhusen alias Bhaylu, after a quarrel sparked over insistence on marriage, poured kerosene from an Ashok stove onto the body of Habibunnisha, set her ablaze with a matchstick with intent to murder her, and fled from the spot. The injured Habibunnisha sustained severe burn injuries on head to chest and abdomen. She was immediately taken to Mehmdabad Nagarpalika Hospital for treatment, given primary care, and thereafter referred to V.S. Hospital, Ahmedabad for further treatment.

2.2. Accordingly, a complaint was filed by the injured Habibunnisha herself before ASI Mr. Chavda at Mehmdabad Police Station, whereupon FIR came to be registered initially for the offences punishable under Sections 323 and 307 of the Indian Penal Code. After the injured Habibunnisha succumbed to her burn injuries on 09.05.2011 at around 4:30 PM, Section 307 IPC was deleted and Section 302 IPC was added. After completion of investigation, charge-sheet was filed on 26.07.2011 before the learned Judicial Magistrate First Class, Mehmdabad, and the case was committed to the Sessions Court, Nadiad where it was registered as Sessions Case No.96/2011.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondent-accused under Section 313 of the Code. The respondent-accused denied all allegations and claimed to be innocent. After hearing both sides, the learned Sessions Judge convicted the respondent-accused

under Section 302 IPC and sentenced him to rigorous imprisonment for life along with fine.

4. We have heard learned advocate for the appellant-accused and examined the oral and documentary evidence adduced before the Sessions Court.

Oral Evidences : -

No.	Particulars.	Exh.
1	PW1 Dr. Kalpesh Somchand Kataria	8
2	PW3 Dr. Mrutunjaybhai Narayanchandra Das	18
3	PW4 Dr. Dineshbhai Ramanbhai Patel	20
4	PW13 Dr. Nirav Manilal Prajapati	41
5	PW5 Fazalmahmmad Noormahmmad Sindhi	26
6	PW6 Gulabkhan Sidarkhan Pathan	28
7	PW7 Yasinmiya Sikandarmiya Shekh	31
8	PW8 Aarifali Jahurali Saiyad	32
9	PW9 Faridkhan Abdulkarimkhan Pathan	34
10	PW10 Sahidmiya Yasinmiya Malek	35
11	PW11 Karimsa Kalusha Diwan	37
12	PW2 Iqbalbhai Sulemanbhai Mansuri	12
13	PW17 Salimbhai Babubhai Khalifa	51
14	PW12 Shabanabanu Samrudin Kazi	38
15	PW14 Samiyudin Sirajuddin Kazi	44
16	PW15 Babubhai Mithabhai Chavda	47
17	PW16 Punaji Thavarji Kotwal	49
18	PW18 Vinubhai Babarbhai Sharma	53
19	PW19 Rameshbhai Khimjibhai Dodiya	56

Documentary Evidences: -

No.	Particulars.	Exh.
1	Police memo written for conducting the P.M. of the deceased.	9
2	Post-mortem report of the deceased.	10
3	Certificate relating to the cause of death of the deceased.	11
4	Police memo addressed to the Executive Magistrate for recording the dying declaration of the deceased.	13
5	Dying declaration of the deceased recorded before the Executive Magistrate	14
6	Carbon copy produced in evidence of the dying declaration of the deceased recorded by the Executive Magistrate.	15
7	Case papers relating to the treatment given to the deceased at V.S. Hospital.	19
8	Police memo addressed to the doctor regarding the deceased having come for treatment at Mahemdavad Municipal Hospital	21
9	Injury certificate issued by the doctor of Mahemdavad Municipality relating to the injuries of the deceased.	22
10	Case papers relating to the treatment of the deceased at Mahemdavad Municipal Hospital.	23
11	Police memo regarding producing the accused before Shri Patel Doctor for medical examination on 12/5/11 at 6:35 p.m.	24
12	Medical certificate issued by Dr. Shri Patel after examining the accused.	25
13	Inquest panchnama of the dead body of the deceased.	27
14	Joint photograph of the deceased and the accused.	29
15	Panchnama of the house of the deceased.	33
16	Panchnama regarding seizure of the pant and shirt of the accused.	36
17	Medical certificate regarding the treatment given to the accused by Dr. Prajapati.	42

18	Police memo addressed to Dr. Shri Prajapati.	43
19	Dying declaration of the deceased / complainant recorded before ASI Shri Chavda.	48
20	Copy of the logbook of the ambulance by which the deceased was taken from Mahemdavad to V.S. Hospital, Ahmedabad	52
21	Entry Extract of intimation given by PSO, Mahemdavad, to the Police Station.	54
22	Extract of Station Diary of Mahemdavad Police Station	55
23	List having sent by Investigating Officer of the muddamal to FSL.	57
24	Receipt issued by FSL acknowledging receipt of the muddamal.	58
25	Forwarding letter sent to Mahemdavad Police Station regarding the FSL analysis report.	59
26	Biological report relating to the baniyan of the accused.	60
27	Serological report relating to the baniyan of the accused.	61
28	Forwarding letter of analysis report from FSL regarding collected from the place of incident	62
29	FSL's Analysis report regarding the items collected from the site	63
30	The report of the FSL mobile van officer inspected the spot and submitted the report.	64

5. Learned advocate for the appellant submits that the impugned order of conviction is required to be set aside because the evidence of dying declarations requires closer scrutiny, there are material inconsistencies in the prosecution case, the medical and other corroborative evidence does not fully support the prosecution version, and the benefit of doubt ought to have been extended to the accused. He therefore prays for allowing the appeal and acquitting the appellant-accused. He submits that

nothing sort of such material has been found to prove the dying declarations beyond reasonable doubt.

6. The learned APP has vehemently opposed the appeal and submitted that the impugned judgment and order of conviction passed by the learned Sessions Judge is legal, proper, and based on a correct appreciation of the oral as well as documentary evidence on record. It is contended that the prosecution has successfully proved its case beyond reasonable doubt through consistent, cogent, and trustworthy dying declarations made by the deceased at different stages, all of which are voluntary, truthful, and duly corroborated by unimpeachable medical evidence. The learned APP submitted that the deceased remained conscious and oriented for a considerable period after the incident, and her statements were recorded by the police officer, the treating doctors, and the Executive Magistrate after due certification of her fitness. It is further submitted that there are no material contradictions or inconsistencies in the prosecution case so as to warrant interference by this Court. The motive arising out of a long standing love relationship and refusal to marry is clearly established, and the nature and extent of burn injuries unmistakably demonstrate the intention of the accused to cause death. The defence version is afterthought and improbable. Therefore, the learned APP prayed that the appeal being devoid of merit deserves to be dismissed and the conviction and sentence imposed by the learned Sessions Judge be confirmed.

Case of Prosecution:-

7. The incident took place on 08.05.2011 at about 8:30 PM inside the residential premises of the deceased Habibunnisha situated in the Khatraj Darwaja area of Mehmdabad. The

prosecution case primarily rests upon the dying declarations both oral and written made by the deceased herself at different stages during her treatment. These includes:

7.1 the statement recorded by ASI Mr. Chavda at Mehmdabad Nagarpalika Hospital shortly after she was brought there, wherein she named the accused Imtiyazhusen alias Bhaylu as the person who poured kerosene from an Ashok stove onto her body and set her ablaze with a matchstick; and

7.2 the history and statements given by her to the treating doctor at V.S. Hospital, Ahmedabad as recorded in the case papers, in which she again attributed the act to her "lover"- accused, stating that the act was committed because she had been insisting on marriage.

(i) The prosecution further relies upon the medical evidence establishing that the deceased had sustained extensive burn injuries covering approximately 94% of her body surface, which injuries were ante mortem in nature and were the direct cause of her death on 09.05.2011 at around 4:30 PM at V.S. Hospital, Ahmedabad.

(ii) The burn pattern and severity, as per the post-mortem report and testimony of the doctors including Dr. Mrutunjanbhai Das, Dr. Kalpesh Kataria, Dr. Dineshbhai Patel and Dr. Nirav Prajapati are stated to be consistent with pouring of a substantial quantity of kerosene followed by ignition. The incident occurred in a private residence where the deceased was staying separately from her brother's old house.

(iii) According to the prosecution, there was a long standing love relationship between the deceased (who was unmarried) and the accused (who is married and has four children), spanning 10-15 years. During this period, the accused allegedly prevented the deceased from entering into any other marriage or engagement by breaking off previously arranged matches and issuing threats. On the fateful evening, when the deceased once again pressed the accused for marriage, an argument ensued, leading to the accused allegedly committing the act in a fully conscious and intentional manner. The accused was arrested on 12.05.2011, four days after the incident, at which time he was found with a plaster on his left leg allegedly sustained while fleeing the scene. The prosecution contends that the entire chain of circumstances including the dying declarations recorded while the deceased was conscious and oriented for several hours after the incident, the medical corroboration of the burn injuries, the motive arising from the refusal to marry, and the absence of any credible alternative explanation establishes the guilt of the accused beyond reasonable doubt for the offence of murder punishable under Section 302 IPC.

7.3 The formal dying declaration recorded by the Executive Magistrate, PW-2 Iqbalbhai Sulemanbhai Mansuri at Exh. 14, at Mehmdabad Nagarpalika Hospital on 08.05.2011, pursuant to a requisition from the police. The Executive Magistrate deposed that he obtained a certificate of fitness from the attending doctor before recording the statement, recorded it verbatim in the deceased's own words in privacy without any prompting or influence, read it over to her for confirmation, obtained her signature, and secured a second fitness certificate after recording. In this declaration, the deceased detailed the 15-year love relationship with the accused, his interference in her two prior engagements by threats and

breaking them off, the quarrel on the fateful evening over her insistence on marriage, the accused pouring kerosene from an Ashok stove onto her body, igniting it with a matchstick, and expressly stated: "**If I die, the responsibility is of Imtiyaz, he has taken such a step against me for the sake of marriage.**" This Magistrate recorded declaration, made while the deceased was conscious, oriented, and fully fit, carries the highest evidentiary value and sanctity under law, being free from any infirmity and duly corroborated by the doctor's certifications.

8. We have carefully perused the record and the submissions made by the learned advocate for the appellant-accused and the learned APP and coming to the core of the prosecution evidence, the case rests principally on the dying declarations of the deceased Habibunnisha, which were recorded on three distinct occasions while she was in a fit state of mind and under clear apprehension of death due to extensive burn injuries.

8.1 The first statement was her complaint-FIR recorded by ASI Mr. Chavda at Mehmdabad Nagarpalika Hospital shortly after arrival, wherein she named the accused Imtiyazhusen alias Bhaylu as the person who assaulted her, poured kerosene, and set her on fire.

8.2 The second was the history given by her to the treating doctor at V.S. Hospital, Ahmedabad, in which she stated: "**Around 9:00 PM on 08/05/2011, my lover came near Khatraj Darwaja, poured kerosene on me and set me ablaze.**"

8.3 The third and most formal was the dying declaration

recorded by the Executive Magistrate PW-2 at the same Mehdabad Nagarpalika Hospital on 08-05-2011, after due certification of her fitness by the attending doctor. In this declaration, she reiterated in detail the long-standing love relationship of 15 years, the breaking of her two engagements by the accused, his threats, the incident of kerosene being poured from the Ashok stove and her being set ablaze, and expressly stated: "**If I die, the responsibility is of Imtiyaz, he has taken such a step against me for the sake of marriage.**" These declarations are consistent in material particulars, voluntary, and made without any prompting or influence. They satisfy all conditions under Section 32(1) of the Indian Evidence Act and inspire full confidence.

9. PW-15 Babubhai Mithabhai Chavda, the ASI who recorded the first dying declaration/complaint at Exh. 48 at Mehdabad Nagarpalika Hospital shortly after the incident, has deposed that he reached the hospital around 9:15 PM on 08.05.2011 upon receiving information from P.S.O. Vinubhai Babarhai. He stated that the deceased Habibunnisha was conscious and oriented, and in his presence with only the doctor and the deceased in the room, she narrated the incident: that accused Imtiyazhusen alias Bhaylu due to her insistence on marriage assaulted her, poured kerosene from an Ashok stove onto her head, chest, and abdomen, set her ablaze with a matchstick, and fled. She expressly stated that if she died, Imtiyaz would be responsible. PW-15 recorded it verbatim as per her narration, obtained her signature, and added his own as witness, along with the doctor's endorsement of fitness. In cross-examination, he denied any prompting, influence, or presence of relatives during recording, confirmed the deceased's consciousness, and affirmed that no assault marks were visible

attributable to burns. He handed over the complaint to P.S.O. around 11:30 PM-12:00 midnight. This testimony fully corroborates the contents of Exh. 48 and establishes its voluntary and reliable nature, free from infirmity.

10. The Post-Mortem Doctor, Dr. Kalpesh Kataria, who conducted the autopsy, clearly established that the deceased suffered 94% ante-mortem burn injuries covering head, chest, abdomen, and major portions of the body, which were sufficient in the ordinary course of nature to cause death. The nature, distribution, and depth of burns were wholly consistent with the pouring of a substantial quantity of kerosene followed by ignition, as described in the dying declarations. No evidence of any other assault or alternative cause of injury was found. The medical opinion rules out self-immolation or accident and fully corroborates the homicidal nature of the act attributed to the accused. This evidence provides strong and independent medical substantiation to the dying declarations and leaves no room for doubt that the death was caused by the injuries inflicted by the accused.

11. PW-3, Dr. Mrutyunjambhai Das at Exh. 18 the Casualty Medical Officer at VS Hospital, Ahmedabad, who examined and treated the deceased upon her arrival around 1:00 AM on 09/05/2011, has deposed that she was conscious, oriented, and able to give a detailed history at the time of admission. He recorded her statement in the case papers, which matches the earlier declarations. Dr. Mrutyunjambhai Das further confirmed in his evidence and cross-examination that the deceased remained conscious and conversant until approximately 3:30 PM on 09/05/2011, after which her condition deteriorated; she became unconscious around 3:45 PM and expired between 4:30-4:45 PM.

This prolonged period of lucidity and fitness lends exceptional credibility to her statements. The treating doctor's testimony and contemporaneous case papers provide unimpeachable corroboration to the dying declarations.

12. The third dying declaration was recorded by the Executive Magistrate Iqbalbhai Sulemanbhai Mansuri PW-2, pursuant to a written requisition from the Mehdabad Police Station. PW-2 has deposed that he proceeded to Mehdabad Nagarpalika Hospital, obtained the doctor's certificate of fitness before and after recording, recorded the statement verbatim in the deceased's own words, read it over to her, obtained her signature, and signed as the recording officer and identifier. The declaration was made in privacy, after double certification of consciousness and fitness by the doctor. This Magistrate-recorded dying declaration carries the highest degree of sanctity and reliability, as it was taken with all procedural safeguards. It is fully consistent with the earlier statements and reinforces the prosecution case beyond reasonable doubt. The law does not require a Magistrate recorded declaration as a *sine qua non*, but when one exists and is free from infirmity, as here, it constitutes the strongest piece of evidence.

13. The argument advanced by the learned advocate for the appellant is that the accused also sustained injury while trying to save the deceased; however, the same does not have the substance which can be said to be in support of the said contention. On the contrary, it goes to suggest that the accused, after setting the deceased on a blaze, just to avoid catching the flame, tried to run away from the place, stumbled down, and sustained the injury and the said fact cannot be ruled out as the same stands substantiated

as surfaced from evidence.

14. The defence has attempted to assail the dying declarations on grounds of alleged inconsistencies, the accused's leg fracture, and motive, but none of these create any reasonable doubt. The fracture sustained by the accused is plausibly explained as having occurred while fleeing the scene after the act, as supported by the sequence in the declarations and medical evidence of Drs. Prajapati and Patel. The motive refusal to marry despite a 15 year relationship, while the accused was already married with four children is clearly established and explains the brutality of the act. Pouring kerosene causing 94% burns demonstrates clear intention and knowledge under Section 300 IPC (clause 4), making the offence murder and not culpable homicide not amounting to murder.

Legal Aspect:-

15. The Hon'ble Supreme Court has held in ***Naeem Versus State of Uttar Pradesh, 2024 INSC 169***, as below:

"7. It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is

true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

16. In the context of the submissions advanced by the learned advocate for the appellant, it is contended that there are inconsistencies in the dying declarations recorded by three different entities at different places and at different points of time. Though considerable effort was made by the learned advocate for the appellant by taking us through the contents of the dying declarations, we do not find any such inconsistencies, lapses, or infirmities as claimed by the appellant. It is well settled law that in cases involving multiple dying declarations, the primary requirements are that such declarations must be voluntary, reliable, and made while the declarant was in a fit state of mind. It is further required that any inconsistencies, if present, must be *material* so as to shake the credibility of the declarations.

16.1 Considering the facts of the present case, the first statement made by the deceased before the ASI and the subsequent statements made before the Doctor and the Executive Magistrate, when appreciated in light of the surrounding facts and circumstances, inspire confidence. We find that these statements do not suffer from material inconsistencies. On the contrary, the fact that the declarations were recorded by different persons lends prudence and substance so as to eliminate the possibilities of inconsistencies.

16.2 The medical condition of the deceased at the time of making the declarations has also been duly considered, and there is

nothing on record to suggest that the deceased was not in a fit state of mind.

16.3 Similarly, the possibility of tutoring by relatives does not arise in the present case, as no such material has been brought on record to substantiate such a claim.

17. Upon careful re-appreciation of the entire evidence, we find that the learned Sessions Judge has correctly appreciated the dying declarations as trustworthy and voluntary, duly corroborated by medical evidence from both the treating doctor and the post-mortem doctor. There is no perversity, misreading of evidence, or error of law in the impugned judgment. The conviction under Section 302 IPC is well founded and sustainable. The sentence of rigorous imprisonment for life with fine is just, balanced, and proportionate; this is not a case falling within the rarest of rare category warranting the death penalty, nor is any interference called for on the quantum of sentence.

18. In the result, the appeal is devoid of merit and is hereby dismissed. The conviction and sentence passed by the learned Sessions Judge, Kheda at Nadiad vide judgment and order dated 09/01/2013 in Sessions Case No. 96/2011 are confirmed.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

After pronouncement of the judgment, the learned advocate

for the appellant-accused requested six weeks time to surrender before the jail authorities. Accordingly, six weeks time to surrender is granted.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod