A PATEL HIRALAL JOITARAM

*v.*

STATE OF GUJARAT

OCTOBER 18, 2001

B [K.T. THOMAS AND S.N. VARIAVA, JJ.]

*Evidence Act, 1872 :*

*Section 32(1)—Dying declaration—Statement by a person—As to any of the circumstances of the transaction which resulted in his death—Admissibility* C *of—Held: The word "circumstances" is very wide in amplitude—Anything which has nexus with a person's death, proximate or distant, direct or indirect, is admissible in evidence—The endeavour should be how to include the statement of a dead person and not how to exclude it.*

D *Penal Code, 1860:*

*Section 299—Culpable homicide—Victim died of burn injuries only after a fortnight—"2ndly" clause of S.300—Applicability of—Held: Mere interval of fourteen days does not attract "2ndly" clause of S.300 so as to afford a cause for mitigation of the offence.*

E *Criminal Trial :*

*Death due to burns—Victim sustained severe burn injures—But death occurred after a fortnight—Death due to other causes—Possibility of—Held: Possibility of supervening causes is not a safe premise to decide whether the* F *victim would not have died due to burn injuries—Cause of death can be determined on broad probabilities.*

*Words & Phrases :*

*"Circumstances"—Meaning of—In the context of Section 32(1) of the* G *Evidence Act, 1872.*

*"Culpable homicide"—Meaning of—In the context of Section 299 of the Penal Code, 1860.*

**The appellant-accused was tried for an offence under Section 302 of** H **the Penal Code, 1860. The trial court acquitted the accused, but the High**

Court convicted him and sentenced him to imprisonment for life. Hence this appeal.

According to the prosecution, the accused took out a can and doused combustible liquid therein on the deceased. The accused then whipped out a lighter and after lighting it hurled its flame on her. The accused sustained severe burn injuries and succumbed to her injuries after a fortnight. The deceased made a dying declaration in which she identified the accused as her assailant.

On behalf of the accused it was contended that the death occurred due to "septic" and not due to the burn injuries as the interval between the date of the incident and the date of death of the deceased was a fortnight; that from the statement of the deceased the identity of the assailant could not unmistakably refer to the accused; that the statement of the deceased was inadmissible in evidence as the said statement related to the parentage of the accused and not to any circumstance connected with the death of the deceased; and that the offence would not escalate beyond `culpable homicide not amounting to murder' since the burns caused to the deceased did not result in the death of the deceased during the initial fatal period and that her death happened on account of some later complications.

Dismissing the appeal, the Court

HELD : 1.1. Mere possibility of other causes supervening during the hospitalisation of the deceased is not a safe premise for deciding whether the deceased would have died due to the burns sustained on the date of the incident. The cause of death can be determined on broad probabilities. [385-C]

*Om Prakash* v. *State of Punjab*, [1992] 4 SCC 212, relied on.

*Dhanna* v. *State of M.P.*, [1996] 10 SCC 79, referred to.

*Modi's Medical Jurisprudence and Toxicology*, referred to.

1.2. It is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicaemia and died of that. Court of law need not countenance mere academic possibilities when the prosecution cases regarding death of the deceased were established on broad probabilities as sequel to the burns sustained by her. [385-F]

A **2.1. Two categories of statements by a person are made admissible in evidence under Section 32(1) of the Evidence Act, 1872 and further made them as substantive evidence. They are : (1) his statement as to the cause of his death; (2) his statement as to any of the circumstances of the transaction, which resulted in his death. The second category can envelope a far**
B **wider amplitude than the first category. The words "statement as to any of the circumstances" are by themselves capable of expanding the width and contours of the scope of admissibility. When the word "circumstances" is linked to "transaction, which resulted in his death" the sub-section casts the net in a very wide dimension. Anything which has a nexus with his**
C **death, proximate or distant, direct or indirect,can also fall within the purview of the sub-section. As the possibility of getting the maker of the statements in flesh and blood has been closed once and for all the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it thereafter. Admissibility is the first step and once it is admitted court has to consider how far it is**
D **reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case. [388-E-H]**

**_Sharad Birdhichand Sarda_ v. _State of Maharashtra_, [1984] 4 SCC 116, followed.**

E

**_Rattan Singh_ v. _State of H.P._, [1997] 4 SCC 161, relied on.**

**2.2. The context in which the deceased made the statements was not for resolving any dispute concerning the paternity of a person or even to establish his parentage. It was in the context of clarifying her earlier**
F **statement that she was set ablaze by the accused whose second name happened to be mentioned by her as some other surname. The dying declaration is inextricably intertwined with the episode in which she was burnt and eventually died of such burns. Looking at the dying declaration from the above perspective there is no doubt that the said statement would**
G **fall within the ambit of Section 32(1) of the Evidence Act. [389-H; 390-B]**

**2.3. From the statements made by the deceased there is no doubt that it was the appellant whom the deceased had referred to as the assailant who doused combustible liquid on her and ignited her with the flame of the lighter. There is no reason even remotely suggesting that the deceased**
H **would have had only a scanty acquaintance with the appellant so as to**

**commit a mistake in identifying him. [390-C]** A

**3. It is inconceivable that the appellant would not have known that setting a human being ablaze after soaking her clothes with inflammable liquid would cause her death as the type of burns resulting therefrom would at least be "likely" to cause her death (if not they are sufficient in the ordinary course of nature to cause her death). The fact that she died only after a fortnight of sustaining those burn injuries cannot evacuate the act out of the contours of the "2ndly" clause of Section 300 of the Penal Code, 1860. Hence the interval of fourteen days between the attack and her death is not a cause for mitigation of the offence perpetuated by the offender. [391-D-E]** B C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 427 of 1999.

From the Judgment and Order dated 8/12/13.10.98 of the Gujarat High Court in Crl. A. No. 279 of 1991. D

U.R. Lalit, Ms. Reetu Sharma and Vimal Chandra Dave for the Appellant.

Ms. Hemantika Wahi and Ms. Anu Sahni for the Respondent.

E

The Judgment of the Court was delivered by

**THOMAS, J.** A businessman of Patan (Gujarat) was arraigned for scorching a young hapless woman (mother of two infant children) to death. The gory felony was perpetrated in broad day light on a public road. The man against whom the accusation was made had no relationship with the victim, maritally or otherwise. The trial court exonerated him, but a Division Bench of the High Court of Gujarat found him to be the killer of that lady and convicted him and sentenced him to imprisonment for life. Hence this appeal by him as of right. F

G

Asha Ben, the roasted victim of the gory episode was one of the 7 daughters of her father. In her wedlock with Vinod Bhai (PW-5) she became mother of two children (Mital and Bhargav). The small family consisting of Asha Ben, her husband and the two children were living in their own house in the city of Patan. Her eldest child Mital was studying in Bal Mandir attached to a school by name Bombay Metal School at Patan. H

A The story of the prosecution is the following. Appellant developed some affair with the sister of Asha Ben which the deceased resented for her own reasons. She had expressed her detestation to her sister (Sharada Ben) and also mentioned it to some other persons. When the appellant came to know of the above reaction of the deceased he wanted to settle score with her.

B On 21.10.1988 at about 10 A.M., Asha Ben was proceeding to the school (Bal Mandir) for collecting her child Mital back home. On the way appellant who was on a scooter met her and buttonholed her malevolently. He questioned her for spreading the canard that he and Sharada Ben had illicit relationship. So doing appellant took out a can and doused combustible liquid contained C therein on Asha Ben. He then whipped out a lighter and after lighting it hurled its flame on her. In a trice Asha Ben was transformed into an anthropoid inferno, screaming and yelling she scampered towards a water-flow to escape from the devouring fire. She reached the water column situated near the railway station and sat beneath it, and the water flowed therefrom eventually extinguished the flames and embers which enwrapped her. But by then she was D blistered with substantial burns and her clothes incinerated into ashes. Among the pedestrians there was a lady who flanked Asha Ben with some clothes to cover up her nudity and a rickshaw was procured for rushing the charred victim to the hospital.

E On coming to know of the incident, Vinod Bhai (husband of Asha Ben) reached the place and by taking her in a rickshaw, speeded up her route to the hospital. Though she was treated in the hospital for nearly a fortnight she succumbed to her burn injuries on 15.11.1988.

On 21.10.1988, FIR was registered on the basis of the statement made F by Asha Ben to the police officer (PW.10) who reached the hospital on getting some uncrystalised information of the episode. In the meanwhile, the Executive Magistrate (PW-1) on being informed by the doctor who examined the lady, visited the hospital and recorded her statement around 11.15 A.M. In that statement she mentioned the name of "Hiralal Patel" as the culprit. After her death the police continued the investigation and completed it and charge- G sheeted the appellant for the offence of murder of Asha Ben.

There is practically no dispute that Asha Ben was set ablaze after dousing her with some inflammable liquid on the morning of 21.10.1988. But on the question of who the culprit was, the prosecution and the defence had great H divergence. Prosecution relied on the statements made by the deceased for

establishing the identity of the culprit, which included the statement given to her husband, to the Executive Magistrate and to the police in the FIR.

The Sessions Judge picked out some infirmities in the statements of the deceased and finally held that those statements cannot be relied on as dying declarations. He also found that the description of the incident narrated by Asha Ben is not consistent with probability, particularly when the investigating officer demonstrated in court how the lighter (alleged to have been used in setting her ablaze) could be lighted.

The Division Bench of the High Court after re-evaluating the evidence came to the conclusion that the trial court has grossly erred in rejecting the statements of the deceased and that the reasons advanced by the trial court were so erroneous that no court would ever have come to such conclusions. Relying on the statements of the deceased learned Judges of the Division Bench of the High Court came to the irresistible conclusion that the identity of the assailant had been unmistakably established as against the appellant.

Hence, the High Court convicted him and sentenced him as aforesaid.

Shri U.R. Lalit, learned senior counsel for the appellant urged, at the outset, that the High Court should have borne in mind that it was an appeal against the acquittal which they were dealing with and the approach should have been different from that of appeal against conviction. According to the learned senior counsel the Division Bench has overlooked the standard formulated by this Court for dealing with an appeal against acquittal and consequently the order of the acquittal was wrongly reversed. We reminded ourselves of the standard to be adhered to while dealing with an appeal against acquittal. In *Dhanna* v. *State of M.P.*, [1996] 10 SCC 79 this Court has reiterated the perspective to be adopted in such a situation, after referring to some of the earlier decisions rendered by this Court on that aspect. We may extract the following observations from the said decision:

> "Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with

A an appeal against acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed."

C Bearing in mind the above standard of caution we may make the judicial scrutiny of the findings arrived at by the High Court. As pointed out earlier, the focus of discussion can first be mustered on the identity of the assailant, for, there is little dispute on the fact situation that one assailant had set her ablaze at the time and place mentioned in her statements. We are, in this context, tempted to dub the reasoning of the Sessions Judge for concluding that D "it is impossible that the Saree could catch fire if the lighter is thrown at her" as preposterous. It requires no effort for any sensible person to understand that it was the flame on the lighter which was hurled at the victim who was by then soaked with inflammable liquid and catching fire in such a situation is a matter of easy grasping for any one.

E We are aware that the statements made by the deceased are the only materials available for establishing the identity of the appellant and hence if those statements are inadmissible or unreliable even if admissible, or insufficient to point to the appellant as the assailant, its inevitable consequence is to set the appellant free. Knowing this position well Shri U.R. Lalit, learned F senior counsel first focussed his contention for showing that the prosecution has failed to prove that Asha Ben's death was due to burns sustained by her on 21.10.1988.

The interval between the date of the incident when the deceased sustained burns and the date of her death was a fortnight. PW-2 Dr. Vikarambhai, G who examined Asha Ben at 10.30 A.M. on 21-10-1988, noticed second degree burns on the upper and lower portions of her hands, front and back of her chest and on the neck, ears and forehead. He found that her condition was "critical" when he saw her first.

H PW-12 Dr. N.N. Parikh, a tutor in Forensic Medicine of the BJ Medical

College, Ahmedabad, conducted autopsy on her dead body on 15.11.1988. He noticed burns of the third degree on the front and back of her trunk, both thighs, etc., besides second degree burns on some other limbs. In his opinion the death of the deceased was due to a stroke on account of such burns and that those burns were sufficient in the ordinary course of nature to cause her death.

Harping on an answer given by PW-12 in cross-examination that death of the deceased had occurred due to "septic" learned senior counsel made out an argument that such septic condition could have developed on account of other causes. Mere possibility of other causes supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21.10.1988. The cause of death can be determined on broad probabilities. In this context we may refer to a passage from Modi's Medical Jurisprudence & Toxicology, dealing with death by burns.

> "As already mentioned, death may occur within 24 to 48 hours, but usually the first week is the most fatal. In suppurative cases, death may occur after five or six weeks or even longer."

In *Om Prakash* v. *State of Punjab,* [1992] 4 SCC 212, the victim was set ablaze on 17.3.1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by this Court.

It is preposterous to say that deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicemia and died of that on 15.11.1988. Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as sequel to the burns sustained by her. Hence we repel the contention of the learned counsel on that score.

Next contention which needs consideration is that even from the statements made by the deceased after sustaining the burns, the identity of the assailant cannot unmistakably refer to the appellant. The first occasion on which she made statement revealing the name of the assailant was when she talked to PW-3 (Sadbhai), a pedestrian. The witness has deposed that when the victim was sitting beneath the water column of the railway station writhing in pain and frantically trying to get the flames quelled, some Sadhus gathered nearby and asked her who had done it to her and then she answered by

A mentioning the name as "Hiralal". A little later, when she narrated the incident to her husband (PW-5 Vinod Bhai) she disclosed a little more details about the identity of the assailant. This is how PW-5 had deposed about it:

> "Asha told me that she was burnt by Hiralal Patel of our society..... She told me that Hiralal asked her why she was defaming him by
B spreading the story that he had illicit relations with her sister Sharada."

It must be borne in mind that so far as PW-5 is concerned he had absolutely no doubt that Hiralal Patel referred to by her is the appellant. When Asha Ben spoke to PW-2 Dr. Vikarambhai she did not mention the name of
C the assailant. Learned senior counsel highlighted that omission for contending that she did not know who that assailant was when she narrated the incident to that doctor. We are unable to give accord to the said contention as it is too much to expect a lady in such a condition to disclose the name of the assailant to the doctor spontaneously without being asked for it. For the doctor, the name of the assailant or even his identity is of no use and hence he would not have
D bothered to know about it.

The main dying declaration was given by Asha Ben to the Executive Magistrate (PW-1). That dying declaration was marked as Ext.11. It was recorded at 11.15 A.M. on 21.10.1988, when she said this:

E

> "Hiralal Patel, who burnt me, met me near Siddharaj Nagar. His scooter No. is 3040. He asked me why are you spreading wrong stories about me. He got very excited and poured some corrosive liquid from a tin of 500 gms. on me and threw a lighter lighted on me.... Hiralal is the son-in-law of Nanavati."

F

Three specifications regarding the identity of the assailant could be discerned from those statements. First is that the name of the assailant is Hiralal Patel. Second is that he reached the place by scooter No.3040. Third is that he is the son-in-law of Nanavati. Prosecution was able to place materials to show that all the above three identifying features are referring to the appellant.
G We may point out that appellant himself admitted that he is Hiralal Patel. When the Investigating Officer seized the scooter from his house appellant made an application before the court for return of the said scooter. It is significant to point out that the registration No. of that scooter is 3040. In fact he filed an application before the court for returning the scooter. The father-in-law of the
H appellant is admittedly one Nanavati and that fact has been spoken to by

Valiben (PW-9). The aforesaid features would almost conclusively establish that it was the appellant whom the deceased meant when she told others that it was Hiralal who caused her burn injuries.

Shri U.R. Lalit, learned senior counsel in his arguments projected the description of the name of the assailant given by Asha Ben in the statement attached to the FIR (Ext.40) as "Hiralal Lalchand" and contended that appellant is not the son of Lalchand. Appellant is "Hiralal Joitaram" and hence the deceased would have referred to some other person, contended the counsel.

In this context we have to look into the words which Asha Ben has spoken in Ext.P-40 FIR regarding that aspect. Those words are extracted below:

> "The resident of our society, Patel Hiralal whose father's name I don't know, he was having illicit relationship with my sister Sharada and I saw them two or three times. I scolded Hiralal and hence he was annoyed with me. The above said Hiralal Lalchand, whose name I give on recollecting afterwards caused me burns."

In the above context we have to refer to a clarificatory statement elicited from the deceased by PW-13 (Bhagwat) the Investigating Officer. That statement is marked as Ext.67. It reads thus:

> "In my statement I have given the name of the acccused's father as Lalchand which has been stated inadvertently. Lalchand is the name of the father-in-law of my sister and hence I remembered it inadvertently. The name of the father of Hiralal is really Joitabhai. He is the son-in-law of Nanavati Soap Factory."

(The statement was recorded in Gujarati and the above extract is the English translation produced by the appellant before this Court).

Learned senior counsel made a two-fold attack on the admissibility of Ext.67. First is that a statement recorded by police under Section 161 of the Code of Criminal Procedure is inadmissible in evidence. Second is that even if it is admissible for any purpose it cannot be used under Section 32 of the Evidence Act as the said statement related only to the parentage of Hiralal.

If what is extracted above from Ext.67 falls under Section 32(1) of the Evidence Act it would stand extricated from the ban contained in Section 162

of the Code of Criminal Procedure. The former is exempted from the ban contained in Section 162. This can be seen from sub-section (2) of Section 162 which reads thus:

> "Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act."

We have therefore to see whether the statement in Ext.67 (extracted above) would fall within the purview of Section 32(1) of the Evidence Act. That sub-section reads thus:

> *"(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."

The above provision relates to the statement made by a person before his death. Two categories of statements are made admissible in evidence and further made them as substantive evidence. They are: (1) His statement as to the cause of his death; (2) His statement as to any of the circumstances of the transaction which resulted in his death. The second category can envelop a far wider amplitude than the first category. The words "statement as to any of the circumstances" are by themselves capable of expanding the width and contours of the scope of admissibility. When the word "circumstances" is linked to "transaction which resulted in his death" the sub-section casts the net in a very wide dimension. Anything which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the purview of the sub-section. As the possibility of getting the maker of the statements in flesh and blood has been closed once and for all the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it therefrom. Admissibility is the first step and once it is admitted the court has to consider how far it is reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case.

In *Sharad Birdhichand Sarda* v. *State of Maharashtra,* [1984] 4 SCC 116, a three Judge Bench of this Court considered the scope of Section 32(1) of the Evidence Act. After referring to a number of decisions of different High Courts on the point Fazal Ali, J, who spoke for the majority opinion, laid down five propositions. Among them the first is that the legislature has thought it necessary to widen the sphere of Section 32 for avoiding injustice. Among the remaining propositions the second is relevant for our purpose and hence it is extracted below:

> "The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case..... Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death."

Following the above decision a two Judge Bench of this Court has stated thus in *Rattan Singh* v. *State of H.P.,* [1997] 4 SCC 161:

> "The collocation of the words in Section 32(1) `circumstances of the transaction which resulted in his death' is apparently of wider amplitude than saying `circumstances which caused his death'. There need not necessarily be a direct nexus between `circumstances' and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death."

Taking cue from the legal position as delineated above we have to consider now whether the statement of Asha Ben in Ext.67 related to any circumstance connected with her death. We cannot overlook the fact that the context in which she made such statements was not for resolving any dispute concerning the paternity of a person called Hiralal or even to establish his parentage. It was in the context of clarifying her earlier statement that she was

A set ablaze by a man called Hiralal whose second name happened to be mentioned by her as Lalchand. When subsequently she was confronted by the Investigating Officer with the said description to confirm whether it was Hiralal son of Lalchand who set her to fire, she made the correction by saying that she made a mistake inadvertently and that it was Hiralal Joitaram who did it and not Hiralal Lalchand. Thus Ext.67 is inextricably intertwined with the episode in which she was burnt and eventually died of such burns. Looking at Ext.67 from the above perspective we have no doubt that the said statement would fall within the ambit of Section 32(1) of the Evidence Act.

Thus, from the statements made by the deceased we have no doubt that it was the appellant whom Asha Ben referred to as the assailant who doused combustible liquid on her and ignited her with the flame of the lighter. There is no reason even remotely suggesting that the deceased would have had only a scanty acquaintance with the appellant so as to commit a mistake in identifying him. We, therefore, agree with the conclusion of the Division Bench of the High Court that prosecution succeeded in proving beyond reasonable doubt that appellant was the assailant who set Asha Ben ablaze.

Shri U.R. Lalit, learned senior counsel then made an alternative argument that the offence would not escalate beyond culpable homicide not amounting to murder. This argument was made on the premise that the burns caused to her did not result in her death during the initial fatal period and that her death happened on account of setting in of some later complications.

Section 299 IPC defines 'culpable homicide' as "whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Explanation 2 to Section 299 has a material bearing on the said contention and hence that is extracted below:

> "*Explanation 2.*- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

Section 300 IPC carves out two segments, one is culpable homicide amounting to murder and the second segment consists of culpable homicide not

amounting to murder. Four clauses enumerated in the section are enveloped in the first segment. What is set apart for the second segment is compendiously described as "except in the cases hereinafter excepted" from out of the first segment. For the purpose of this case we deem it necessary to quote only the second clause in Section 300 IPC.

> "2ndly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused,"

In the present case, appellant did not even make an effort to bring the case within any of the four exceptions enumerated in Section 300. Hence the only question to be answered is whether he did the act with the intention of causing such bodily injury as he knew "to be likely to cause death of the deceased". It is inconceivable that appellant would not have known that setting a human being ablaze after soaking her clothes with inflammable liquid would cause her death as the type of burns resulting therefrom would at least be "likely" to cause her death (if not they are sufficient in the ordinary course of nature to cause her death). The fact that she died only after a fortnight of sustaining those burn injuries cannot evacuate the act out of the contours of the "2ndly" clause of Section 300 IPC. There was a little abatement of the ferocity of the flames which engulfed her as she, in the instinctive human thirst of getting extricated from the gobbling tentacles of the fire, succeeded in tracing out a water-flow. Such a reflex action performed by her had mitigated the conflagration of the flames but did not save her from the fatality of the calamity. Hence the interval of fourteen days between the attack and her death is not a cause for mitigation of the offence perpetuated by the offender. We are, therefore, not impressed by the alternative argument advanced by the learned senior counsel for the appellant.

In the result, we dismiss this appeal.

V.S.S. Appeal dismissed.