
Valkubhai Lakhubhai Zamar Vs State of Gujarat

Criminal Appeal No. 394 of 2011

Court: Gujarat High Court

Date of Decision: Oct. 26, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 311, 313, 374(2)#Evidence Act, 1872 - Section 106, 157#Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Anant S. Dave and Z.K. Saiyed, JJ.

Bench: Division Bench

Advocate: Y.S. Lakhani, Senior Advocate and Pravin Gondaliya for S.G. Associates, Advocate, for the Appellant; H.S. Soni, Addl. Public Prosecutor, for the Respondent

Judgement

Anant S. Dave, J.

This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is filed against the conviction dated

13.1.2011 passed by learned Additional Sessions Judge & Fast Track Court No. 2 at Junagadh in Sessions Case No. 87 of 1998 wherein the

appellant is directed to undergo the sentence for rigorous imprisonment for life and fine of Rs. 1000/- and in default of the same, further simple

imprisonment for one month for the offence punishable under Section 302 of Indian Penal Code.

2. The case of the prosecution in brief is as under:

2.1. The complainant in this case Mr. Bavkubhai Oghadbhai Vank, Kaathi Darbar by cast, aged 40 years was residing with his family at

Joshipura, Junagadh and maintaining the livelihood of the family consisting of daughters Chadraba and Induben and son Jayraj by doing the labour

work of lapidary. The complainant and his wife Vasantba are residing with the. As stated by the complainant, the marriage of his eldest daughter

Kailashba was solemnized with Valku, the son of Lakhubhai Naazbhai Jamur native of A/3 Tarshingda, Taluka: Dhaari on 1.2.1998 as per the

custom of his cast and the said Lakhubhai resided at Junagadh, Hajoer Bungalow with his children and the marriage of Dilu, the eldest son of

Lakhubhai was solemnized before two years with Geetaben, the daughter of Dadubhai, S.T. Conductor residing at Rameshwar Society at

Junagadh. Kailashba, the daughter of the complainant was engaged with Valku, son of Lakhubhai before five years and as it was decided to fix the

marriage of his daughter and as the marriage was fixed, Dilubhai, the son of Lakhubhai and his wife Geetaben both started residing separately by

taking the house on rent and thereafter started residing in his father-in-law's house and at the time of marriage of complainant's daughter, he used

to visit frequently. After the marriage of the complainant's daughter, she stayed at her matrimonial house for a week after 1.2.1998 and as per the

custom of the cast, Kailash was taken by the complainant, where, she stayed for one month and seven days and as Kailash had to appear in the

examination of S.S.C., the son-in-law Valkubhai took her to matrimonial home at Hajoor Bungalow, Junagadh and she appeared in the

examination from her matrimonial home and after completion of examination, his son-in-law had dropped her at the house of complainant. After

two-four days, in-laws of the complainant, Jeetuben, a wife of Lakhubhai, who also happens to be a sister (daughter of complainant's aunt), made

phone call to the complainant and informed him to come there. The complainant and his brother-in-law Bhupatbhai both had gone to Hajoor

Bungalow, at that time, Lakhubhai and his elder son Dilu both were sitting and as the complainant went there, his son-in-law Valkubhai and

Jeetubhai, a sister of the complainant told the complainant that Dilu had broken the cupboard given by him in the dowry and he had beaten her and

would beat you also. Meanwhile, Dadubhai, a father-in-law of Dilubhai and his son Prakash had come there. The sister and son-in-law of the

complainant had stated that ""you have given good article in the dowry, therefore, Dilu and his wife Geetaben are hurt because she was given less

dowry, therefore she was angry and she and Dilu did not like the marriage of your daughter to be solemnized with Valku. But, as per the wish of

complainant's sister and the son-in-law Valku, the marriage was solemnized, they were unhappy for this reason"". Moreover, the complainant has

stated in his complaint that thereafter, Dadubhai the father-in-law of Dilubhai and his son and her wife Maniben had come to beat the complainant

and they were stating that either their daughter or complainant's daughter will stay there, both will not stay together. The complainant had given the

application in this regard at Joshipura Chawky and the compromise had taken place later on.

2.2. Before five days from 3.5.1998, Jeetuben, sister of the complainant and mother-in-law of Kailash had come to the house of the complainant

and asked him to send Kailash at her matrimonial house, to which complainant refused. But, at the instance of the complainant's sister, the

complainant agreed and on 30.4.1998, his daughter was sent at her matrimonial house and told to send her back after two-four days.

2.3. On 3.5.1998, as there was mass marriage in the community of his neighbour Deelipbhai Goswami, Vasantben, wife of the complainant and

Kamalaben, wife of the complainant's brother-in-law had gone to the matrimonial house of Kailash and invited son-in-law to attend the marriage

and as the son-in-law was suffering from the fever, the complainant's wife had told him to come to her house at night so they would consult the

doctor, but on waiting for him till 11:00 pm, he did not come.

2.4. Further on 3.5.1998, at about 5:45 am, Deelipbhai, the elder brother of the husband of the complainant's daughter and his wife Geetaben

both had come to the house of the complainant and told that his daughter was not feeling well. Therefore, the complainant and her wife both had

gone to the house of his son-in-law at Hajoor Bungalow by rickshaw. Whereas, the elder brother-in-law of the husband of complainant's

daughter, his wife and Jeetuben, a sister of the complainant were in the front room. The complainant had gone inside the room and saw that her

daughter was lying on the bed in straight condition and the foam was coming out from the nose. Therefore, the complainant had asked as to what

has happened to her? Then, the elder brother-in-law of the husband of complainant's daughter and his wife had told that she had consumed the

medicine. His daughter was immediately brought to the Government Hospital by the rickshaw, she did not speak anything during this period and

after examining, the doctor declared his daughter dead. After arriving at the hospital, the complainant came to know that the complainant's son-in-

law Valkubhai was brought to the Government Hospital by his father Lakhubhai and he was admitted and on asking Lakhubhai, he stated that he

has consumed the poison. Moreover, the complainant has stated that when he saw her daughter in the hospital, she sustained the nail mark on her

throat and cheek and there was a black scar on one hand and the body was greenish and thereafter, the police came to the hospital for the

investigation and followed the procedure and the complainant's daughter was brought in the postmortem room. Further, as stated by the

complainant the throat of his daughter Kailash was caught hold by the father-in-law, Lakhubhai and his elder brother-in-law, Dilu and his wife

Geetaben and his son-in-law Valku had made Kailash to consume the poison forcibly and they had killed her and the reason thereof is such that

the marriage of her daughter Kailash was solemnized at the instance of complainant's sister Jeetuben, the father-in-law Lakhubhai and his son Dilu,

Valku and Geeta, wife of Deelu did not like it and the in-laws of Deelu were insulted and because of their displeasure, the complainant's daughter

was killed.

3. Mr. Y.S. Lakhani, learned senior counsel appearing for the appellant would contend that order of conviction and sentence is against the

evidence on record and principles of criminal jurisprudence inasmuch as, a serious error of law is committed by learned trial Judge by convicting

the appellant, though the prosecution has totally failed to prove its case beyond reasonable doubt. It is further submitted that medical evidence has

not supported the case of the prosecution and even homicidal death is not established and in absence of any such evidence with regard to

homicidal death the appellant ought not to have been convicted. According to learned senior counsel for the appellant if testimonies of Dr. Kamlesh

Vala at Exh. 56 is considered it is admitted that possibility of natural death was not ruled out and it was not challenged by the prosecution in re-

examination of the above witness. Even the possibility of exceptional death was not challenged by the prosecution and under the circumstances, the

appellant deserves acquittal of all charges.

4. Further, while convicting the appellant, the learned Judge has relied on the evidence of interested witnesses and they happen to be very close

relatives of the deceased and in absence of examination of independent witness, case of the prosecution remained in an arena of suspicion and such

suspicion or doubt howsoever strong may be, by itself would not lead to the guilt of the accused.

5. It is contended that other co-accused who was falsely implicated were rightly acquitted by the trial court which reveal that the appellant herein is

convicted only because he was seen together with his wife and failed to discharge his burden under Section 106 of Evidence Act. If the evidence is

considered in proper prospective it is clear that the appellant accused did discharge his burden convincingly by giving cogent explanation and

corroborating evidence also appearing on record in support thereof in form of treatment given to the appellant by medical officer, deposition of the

Doctor who administered such treatment, a statement recorded by Executive Magistrate when the appellant's admitted in the hospital, opinion of

expert about the medicine consumed by the appellant and appellant was taken to the hospital not by his father, a co-accused but by police

employee in official vehicle, for which, testimonies of driver of the vehicle and investigating officer support the version of appellant. In a case based

on circumstantial evidence, the prosecution has to establish circumstances leading to the guilt of the accused and every circumstances having link

with another one and forming chain of such events leading to inescapable guilt of the accused and even ruling out possibility of involvement of any

person other than accused. Such is not the case and, therefore, the appellant deserves acquittal by quashing and setting aside the judgement of

order of conviction and sentence under challenge in this appeal.

6. Mr. Y.S. Lakhani, learned senior counsel has drawn our attention to testimonies of all the witnesses and other documentary evidence in support

of above arguments pointing out vital omissions and major contradictions in the version of P.W's as recorded by police, their testimonies before

the trial Court, which basically consisted of only relevant and interested witnesses with a view to secure conviction of the appellant. Even learned

trial Judge has also agreed on defence of the accused accepting the nature of injuries sustained by the deceased were not sufficient to cause the

death relying on opinion of medical experts. Mr. Lakhani, learned senior counsel has finally contended that in the facts of this case even accused

has explained the circumstances about last seen together and subject knowledge etc. by discharging his burden cast upon him.

7. In support of his arguments, learned counsel has placed reliance on the following decisions of the Apex Court which are as under:

1. Sharad Birdhichand Sarda Vs. State of Maharashtra, about circumstantial evidence and conviction on the basis of such circumstances and also

about Section 313 of Code of Criminal Procedure, 1973 to explain incriminating circumstances that is put to accused.

2. Joydeb Patra and Others Vs. State of West Bengal, in the context of Section 106 of Evidence Act about obligation of person to prove a fact

within subject knowledge of such person, arises only after prosecution has proved its case beyond reasonable doubt since burden to prove guilt

always lies on prosecution. Similarly Vikramjit Singh @ Vicky Vs. State of Punjab, was followed in this case.

8. Mr. Mitesh Amin, learned Public Prosecutor would support the reasonings given by learned trial Judge on the basis of which findings were

arrived on conclusion drawn for convicting and sentencing the appellant/accused. It is vehemently submitted that marriage life of the deceased with

the appellant was of three months and earlier a complaint was lodged for the dispute, though resulted into compromise but bitterness had continued

between the parties. On a fateful night, husband and wife were alone and under the circumstances a duty is cast upon appellant-accused to

explain death of his wife and reading the evidence together it is revealed that the appellant accused has failed to discharge the burden and on the

contrary tried to bring such material so as not to believe his innocence. That the prosecution having established the case of "asphyxia" due to

suffocation followed by simple injury marks on the deceased would lead to inescapable conclusion about guilt of the accused, since all

circumstances are established by prosecution, every circumstance and event has formed chain which ruled out innocence of the accused. The

nature of medicine consumed by appellant for which, no ailment or disorder was noticed and was found conscious when he was admitted in the

hospital and even statement was recorded in the form of dying declaration initially by the Executive Magistrate. There is no reason to disbelieve

close relatives including the complainant and his wife even though they are interested witnesses, when in their testimonies they have confirmed and

adhered to what they have stated during the course of investigation. The fact that accused-appellant was admitted in the hospital and the deceased

was not taken for immediate medical treatment would reveal the conduct of the appellant and other accused and therefore, conviction and sentence

ordered by learned trial Judge deserves to be confirmed and no interference is called for.

1. Trimukh Maroti Kirkan Vs. State of Maharashtra, in the context of Section 106 of Evidence Act and circumstantial evidence along with last

seen together. Even conviction can solely be based on circumstantial evidence. In the facts of this case, it is born out from the evidence that such

circumstances were established and proved by the prosecution together with failure on the part of the accused-appellant to discharge his burden

under Section 106 of Evidence Act.

9. We have carefully gone through the oral and documentary evidences which read as under:

ORAL EVIDENCE:

DOCUMENTARY EVIDENCE

Column No. 17 external injuries and column No. 23 reads as under:

Column 17: The eyes and the mouth were closed. Presence of white foam in the nose and mouth. There were two external injuries.

Column 23: Reason of death kept reserve till arrival of the chemical report.

After arrival of examination report of the chemical analyzer, the final cause of death has been stated ""Asphyxia due to suffocation"".

10. Nilesh Laldas, P.W.1 Exh. 43, is a panch witness of scene of offence panchnama where wrappers of 10 tablets each of Locumplus and

Tenkodet-2 were found which are used ordinarily as tranquilizer and sedatives. After deposing to fact about receiving above two wrappers of

medicines and other items in his examination-in-chief, in cross-examination he deposed as under:

It is not true that, when I was called in panch, other Panch Anil Goradhanbhai was present and I was explained to draw panchanama of the scene

of offence near Government Hajur Bungalow NO.7 in Meghaninagar. It is not true that, said bungalow NO.7 facing western direction, having

affixed a strip written name of PI Shri L.M. Jamar and having it been stated to be belonged to Jivubaiben Lakhubhai, the scene of offence is

shown. It is not true that, in the north of the room of the western door in bungalow, a room is shown facing southern door, wherein the cot which is

made of iron, by spreading a mattress and a bed sheet of milk colour and yellow, green, blue colour strings embroidered on it, its being with the stains

of vomiting, it was seized and after affixing a slip bearing signatures of us the panchas, put in a small bag, it was seized. A seal of police was

affixed. It is not true that, after this bed sheet, the mattress cover wherein there are scattered spots of vomiting, it was removed from the mattress,

folded and put in a cloth bag and put a slip bearing signatures, it was seized and it was sealed. It is not true that, there are two windows in the east

of the said room. Wrappers of the tablet lying on the raised platform of the western window near north side window, they are two empty wrappers

of ten tablets each, Locumplus was written thereon, which were seized. And the wrappers of other two tablets, out of which the wrapper piece of

six tablets wherein it is written Tenkodet-2, they were also seized after placing a slip bearing signature and putting it in a bag. And one key bunch

of Godfree cupboard is lying near it. It is not true that, though a detailed panchanama in this regard has been drawn in presence of us the panchas,

nothing has been seized or panchanama has not been drawn and the a false deposition has been given to defend the accused persons.

(emphasis supplied)

10.1. So is the case of Anilbhai Gordhanbhai P.W.2 in his examination-in-chief reiterates recovery of two wrappers of medicines.

10.2. Bhupatbhai Hemantbhai P.W.3, Exh. 48, is a panch witness of the inquest panchnama of the dead body confirms to have signed the

panchnama, which was signed in the presence of a Dy. Mamlatdar. The above panch witnesses notices two minor injuries below the ear on the

right side of the neck, half of inch two skin cuts appear, blood is clotted therein and the part of the dead body appeared greenish. No cross-

examination of the above witness had taken place.

10.3. Minaben Dilipbhai, P.W.4 and Dilipbhai Hiradharbhai, P.W.5 are wife and husband and have homely relations with Bavkubhai, complainant

and father of the deceased Kailashben and Dilipbhai was treated as maternal uncle. The above couple had invited family of Bavkubhai,

complainant and his daughter Kailashben and her husband Valkubhai to attend a group marriage held by community. Both the above witnesses

reached at the Government hospital, where they had seen a dead body of Kailashben and had also seen nail marks on the cheek nearby ear and

swelling on throat and white liquid was oozing out of the nose. It is necessary to produced cross-examination of P.W.5 Dilipbhai as under:

It is not true that no such incident has occurred as stated by me in the examination-in-chief or that I have not seen the dead body of Kailashben in

the Emergency ward or I have not seen the nail marks, something like long slit and the swollen throat and green body as I stated in the

examination-in-chief. I have stated in the statement before police that ""It was like two long slits on the part below ear, there was clotting of blood in

it and throat was swollen and the body was appearing like green"". It is not true that I state falsely the fact of going to Government Hospital with my

wife on scooter. It is not true that I state falsely that Bavkubhai had told me the fact that Kailash was forced to consume medicine by her father-in-

law or wife of elder brother of her husband and this caused her death"". It is not true that I state falsely that Bavkubhai had told me such a fact that

Kailash was brought to the Hospital by her parents in the condition of having consumed medicine, people from her matrimonial side also brought

their son Valku to the Hospital, Kailash was not taken, hence, her parents had brought her. It is not true that as I had relations with Bavkubhai,

though do not know anything. I am giving false deposition to support the complainant.

(emphasis supplied)

10.4. Dr. Kamlesh Vinodrai Jhala, P.W.6, who was a medical officer at Civil Hospital, Junagadh visiting his duty on 3.5.1998 who had carried out

examination of the dead body and noticed rigor mortis present over the entire body, white liquid foam coming out of the mouth and nose and

following external injuries were found in column 17 of postmortem report as under:

(1) A single semi-circular mark was seen on the right side of the face below eye, which was in reverse U shaped.

(2) Two small abrasions of 1 cm were found on the right side of throat.

Final cause of death was given by Dr. S.K. Shah which was Asphyxia due to suffocation. The above P.W. further states in his examination-in-chief

as under:

The external injuries mentioned in column No. 17 by Dr. S.K. Shah (produced) vide Mark 7/6, were found to be only nail marks of fingers and

no such internal injury of the same, of trachea or fracture was found, sign of Dr. S.K. Shah is therein also which was issued on date 6.6.1994. I

identify his sign therein. It is given Exh. No. 62 in my record, the Final Cause of death Certificate was demanded after the arrival of F.S.L. Report

from the Doctor, the original for the same is produced, pertaining to that, Final Cause of Death Certificate of Exh. 61 was issued by Dr. S.K.

Shah, it is given Exh. 63. The collected viscera and trachea were sent to Police Staff and the office-copy of yadi is in my record which is produced

vide Exh. No. 64. As per my opinion if a person puts a handkerchief or dupatta (a cloth of two lengths worn over shoulders) over the mouth and

strangulate forcefully with or pillow and if thus breathing is obstructed, it cause asphyxia and due to this, death can take place. In this case also, it is

possible for death to occur.

(emphasis supplied)

In cross-examination, the above P.W.'s state as under:

It is true that on looking to all medical papers of the present case, there is no fracture on the parts of respiratory system and the deceased has not

accepted the element of poison, under these circumstances, perhaps possibility of natural death is there. It is true that the external injuries, which

were seen by me, such injuries can be caused by self also. It is true that the possibility of occurrence of such injuries is there also at the time of

copulation. It is true that such injuries can occur accidentally also. Today I had brought the letter dated 28, 29/10.1998 written by P.I. Junagadh to

Civil Surgeon, Junagadh with me and letter on full time surgeon dated 30.6.1998, the letter received with it and I am producing the same at your

instance herewith, it is given combined Exh. No. 65.

(emphasis supplied)

10.5. Bavkubhai Oghadbhai, P.W.7, a complainant and father of the deceased in his examination-in-chief almost reiterates about the incident in

question and what he stated in the complaint and when he reached at the scene of offence around quarter to 6 hours in the early morning on

3.5.1998 he states as under:

We came to know about the incident at quarter to six hours in the morning on the day of the incident when both Dilipbhai -brother-in-law of my

daughter and his wife Gitaba came to our house and stated that your daughter is not good and therefore you two persons come there and saying

this, they left and therefore my wife and I went to Hajur Bungalow in a rickshaw. When we went there, Dilubha Jetha - brother-in-law of my

daughter and Jituben -mother-in-law of my daughter were there. On seeing in the inside room, my daughter was lying supine on the bed and foam

was coming out from mouth and nose. We asked as to what happened to her. So, Jituben and brother-in-law and sister-in-law told that she has

consumed poisonous drug. Valku has also consumed poisonous drug. On saying so, we immediately brought her at government hospital in the

rickshaw. My daughter has not spoken anything up to them. Doctor examined her and declared her to be dead.

After coming to the hospital, we came to know and saw that my son-in-law Valku was also brought to government hospital by his father and

admitted there and Lakhubhai informed that he has consumed poisonous drug. Looking at our daughter in the hospital, her body had become

green and nail-marks were there on the face. Thereafter, police came and took the dead body of my daughter in P.M. Room after drawing a

panchnama. My daughter Kailash has been killed by Lakhubhai, his son Dilu, his family members Gitaba and my son-in-law Valku making her to

consume poison forcefully, holding her throat. The reason is that the marriage of my daughter was solemnized with Valku at the instance of my

sister Jituben but Lakhubhai-father of my son-in-law, his son Dilubha and his wife Gitaba did not like this and therefore this incident occurred.

After Kailash and Valku consumed poisonous drug, Valku was taken to hospital by his father Lakhubha. My wife and I took Kailash to the

hospital in a rickshaw after we reached there. On reaching to the hospital, in-laws of my daughter, Valkhubhai and his son Dilip all were there. On

that time, we asked them and they told that Kailash and Valku have together consumed poisonous drug at 12 o'clock in the night and though they

did not bring my daughter to hospital and Valku was brought to hospital by Lakhubhai. My daughter was brought to hospital only after we reached

there in the morning. Though the incident of consuming poisonous drug had taken place at 12 o'clock in the midnight, the in-laws of Kailashben did

not inform us through phone or any other way. The police has recorded my statement for this matter which was taken on that day. The accused is

present in the court.

In cross-examination it is stated as under:

It is not true that I am falsely stating the fact that before three to days of death, Jituben came and as she told me to send her, I had denied but as

she insisted I sent my daughter on the second day and told to send her back after two to three days and she was to be sent back on the second

day of the incident. It is not true that I falsely state the fact that for the group marriage of Dilipbhai Goswami, my wife and Kamlaben went at the

place of father of my son-in-law and as Valku was suffering from fever at that time, I told my wife to come at home and we will consult the doctor

and they did not return in the night. It is not true that I falsely state the facts that on the day of the incident Dilipbhai and Gitaba came to our house

at quarter to six o'clock in the morning and told that as you have not met your daughter, any two persons come there and both of them left and my

wife and I went to Hajur Bungalow in a rickshaw and Dilubhai, Jitubhai etc. were present there and on seeing in the inside room, my daughter was

lying supine on the bed and foam was coming out from her mouth and nose. It is not true that I falsely state the fact that we asked as to what

happened to her, so they told that she has consumed poisonous drug and Valku has also consumed poisonous drug and on saying so, we

immediately brought her at government hospital in the rickshaw and she was declared dead. It is not true that I falsely state the fact that after

coming to the hospital, Valku and his father were at the hospital and Valku was brought to hospital by his father and Valku was brought to

government hospital by his father and Lakhubhai informed that he has also consumed poisonous drug. It is not true that I falsely state the fact that

looking our daughter in the hospital, her body had become weak and nail-marks were there on her face and thereafter the police came and sent the

dead body of for P.M. It is not true that I falsely state the fact that my daughter has been killed by Lakhubhai, Dhiru, Gita and Valku making her to

consume poisonous drug forcefully by holding her throat. It is not true that I falsely state the fact that the marriage of my daughter was solemnized

with Valku at the instance of Jitubhai and as Lakhubhai-father of my son-in-law, his son Dilubha and his wife Gita did not like this, the incident has

occurred. It is not true that I falsely state the fact that after Kailash and Valku consumed poisonous drug, Valku was taken to hospital by his father

Lakhubha and my wife and I took Kailash to the hospital after we reached there. It is not true that I falsely state the fact that as Valku and Dilip

were going to hospital, at that time, we asked them and they told that Kailash and Valku consumed poisonous drug at 12 o'clock in the night and

though my daughter was not brought to hospital and Valku was brought to hospital by Lakhubhai and my daughter was brought to hospital only

after we reached there in the morning. It is not true that I falsely state the fact that though the incident of consuming poisonous drug had taken place

at 12 o'clock in the midnight, the in-laws of Kailashben did not inform us through phone or any other way. It is not true that though the death of my

daughter Kailash is natural and accidental, I have given a false complaint. It is not true that I have given a totally false complaint by raising false

reasons on the basis of presumption. It is not true that immediately after knowing the incident, Lakhubhai-father of my son-in-law personally came

to take me and my wife and we went to the house with him and Lakhubhai was with me while shifting Kailash hospital. It is not true that Lakhubhai

did not take Valku to the hospital but Lakhubhai help me to take my daughter to hospital. It is not true that on the day of the incident, the fact has

come to my knowledge that at the time of the incident, Valku and Kailash were alone in their room and at that time a conversation had taken place

between Valku and my daughter with respect to the fact that Valku was suffering from fever since last five days and after the conversation, Valku

took ten sleeping pills together and he went to sleep and in the same condition he was transferred to hospital by PSI. It is not true that I have

whimsically raised facts and filed a complaint regarding the incident against this present accused persons on the basis of beliefs and presumption. It

is not true that I give a false deposition.

(emphasis supplied)

10.6. Vasantben Bavkubhai, P.W.8, is wife of the complainant and mother of the deceased. After stating certain events which took place prior to

and after the marriage of her daughter Kailash and dispute that elder brother-in-law and sister-in-law of Kailash she states as under:

The information of the incident was given around at quarter to six o'clock in the morning on the day of the incident. My daughter's "Jeth" Dilubha

and his wife Gitaba came to our house and said that, " your daughter is not well, both of you come ". Saying so, they went away and I and my

husband went to Kailash's matrimonial house at Hajur bungalow in rickshaw. When we went there, my daughter's jeth and jethani and mother-in-

law Jituben were at home. We asked, " where is Kailash ? ". So, she was sleeping on cot in one room. Then, as I and my husband went there and

saw, Kailash was sleeping supine on cot. Foam was coming out of her nose and ear. Thereafter, we asked the person who was present in the

home. On asking to her mother-in-law and jeth and jethani as to what happened, it was replied that Kailash has consumed medicine. Therefore,

both of us immediately brought Kailash to Government Hospital in the rickshaw in which we came. Our daughter Kailash has not spoken anything

and after examining in the hospital, the doctor said, " she has died ". When we went to the hospital, we came to know that Valku has also

consumed medicine and therefore, he has been admitted to the hospital. As we saw, Valkubhai was brought to the hospital by his father Lakhubhai

and had been admitted and Lakhubhai was there. On seeing my daughter in the hospital, there were nail marks on face and also on throat and

there was black contusion on one hand and her body had become like green glass and thereafter, after conducting P.M. of the dead body after

procedure of police investigation, it was handed over to us. Its funeral ceremony was done. We gave good things to my daughter Kailash in

dowry. Hence, her jeth and jethani did not like it and they and Lakhubhai did not like the marriage of Kailash with Valku. For that reason,

Kailash's father-in-law Lakhubhai, her jeth Dilubhai, jethani Gitaba and husband Valkubhai gave her medicine forcefully and killed her. Kailash's

jeth Dilubha and his wife Gitaba had come to his father's home at Hajur bungalow to live before four to five days of the incident. The incident has

taken place due to above reason. The police has recorded my statement in that regard. The accused persons are the same who are present in the

court.

In cross-examination she denies certain facts and her cross is also on the line of her husband Bavkubhai P.W.6 but admit the custom of Kathi caste

of giving ornaments:

It is true that as per custom of Kathi caste, a necklace of ten to twelve "tola" (a measurement for weighing gold), armlet, wristlet, auspicious spot,

ear-ring and ring were given to my daughter Kailash by persons of her matrimonial house at the time of her marriage. The witness herself states that

all these articles might be just with my daughter Kailash i.e. with her in-laws at the relevant time.

(emphasis supplied)

10.7. Kamlaben P.W.9, wife of Bhupatbhai, brother of Vasantben who accompanied P.W.7 and reached Government Hospital, where she found

dead body of Kailash with some injuries.

10.8. Bharatbhai Champrajibhai Khachar P.W.10 and Bhupatbhai Champrajibhai Khachar P.W.11 are brothers of Vasantben and maternal uncle

of the deceased Kailashben and particularly Bharatbhai in his cross-examination deposed as under:

It is true that since the time of the marriage of Valkubhai, both - his elder brother Dilubhai and " bhabhi " Gitaben had gone to live separately and I

have also dictated such fact before the police. When I reached the hospital, the police interrogated me and recorded my statement and thereafter,

after interrogating Bavkubhai, his complaint was also taken. I know as to what the police has written by my name. It is not true that I have not

dictated in my statement before the police that, "" at that time, Bavkubhai told me that, "Kailash"s husband Valku also consumed medicine and he

has been brought to hospital. His health is good". It is not true that I have not dictated in my statement before the police that, " before about fifteen

days of the incident, Mahipatbhai, Prakashbhai, Dadubhai and Mahipatbhai"s wife went to Bavkubhai"s house to beat". It is not true that it has not

been dictated in my statement before the police that, "after going there, it was said either your daughter (Kailash) will live in the house of

Lakhubhai"s son or my daughter (Gita) will live in the house of Lakhubhai"s son". It is not true that I have not dictated in the statement before the

police that, "I got the compromise done in that application and the application was withdrawn". It is not true that I have not dictated in the

statement before the police that, " the reason for such incident and giving threat was that Kailash"s father gave much dowry and hence, Dadubhai

and his family members became jealous and Kailash"s father-in-law Lakhubhai did not like the marriage of Kailash with Valkubhai ". Kailash"s

mother-in-law Jituben and her father Bavkubhai are cousins. This has not happened for that reason.

It is not true that I know very well that the death of my niece Kailash is natural and accidental incident and my " banevi " has got up quite false facts

against the present accused persons and a false case has been got up and I have also been got up as a false witness. It is not true that I have given

false deposition in the court as per the statement got up unitedly by my "banevi" and the police by my name. It is not true that all of us have

mentioned false facts in the court by creating false reasons only on the basis of presumption. It is not true that I know that on knowing about the

incident, Lakhubhai, "vevai" of my "banevi", himself immediately came to take my "banevi" and sister and they went to his home with him and

procedure of taking Kailash to the hospital was done just in the presence of Lakhubhai. It is not true that I know that Lakhubhai has not taken

Valku to the hospital, but Lakhubhai has taken Kailash to the hospital along with the parents of my niece. It is not true that Kailash and Valku has

been taken to the hospital together. It is not true that such fact also came to my notice on the day of the incident that both- Valku and Kailash were

alone in their room at the time of the incident. At that time, a conversation was made between my niece and Valku in respect of the fact that Valku

had been suffering from fever for five days and thereafter, having consumed ten sleeping pills together, Valku slept and P.S.I. Vagh took him to the

hospital in the same condition. It is not true that the said fact is also in my notice that as Valku's own life was in danger, the police has recorded his

dying declaration before Mamlatdar. In it, Valku has clearly mentioned the entire fact which was taken place between husband and wife. It is not

true that although I know it very well as to what Valku stated to Mamlatdar and the incident has really taken place accordingly, my "banevi" and

we all have got the false case created against the present accused persons on the basis of imaginative presumption and I have given false deposition

in the court today as tutored.

(emphasis supplied)

10.9. Bachubhai Bhikhabhai Gohil P.W.12, driver of the police van in which Valkubhai, accused No. 3 was taken to Government Hospital and

states in cross as under:

It is not true that I state false that when I having taken government vehicle, went there, the officers Vagh and Jamar came in government vehicle to

take Valku to the Government Hospital. While taking to this Valku to the Government Hospital, he was conscious and he walked from house and

sat into the vehicle. He got off at the Government Hospital and also went to the hospital on foot. It is not true that I state quite false that on being

called by the officer Vagh, when I having taken my vehicle went, Valku was conscious and got into the vehicle himself and got off the hospital

himself. It is not true that after being called by the officer Vagh, only Shri Vagh came with me in government vehicle and as Valku's condition was

not good, he had to be lifted and taken. It is not true that such incident as stated by me in examination-in-chief or sequence of incident in such way

as I state, has not taken place, but for sticking to the police statement got up by my name, I gave false deposition in the court as tutored. It is true

that I have not been interrogated or my statement has not been recorded before one month of the incident. It is not true that my statement was

recorded on 3/5/98 with Shri Vagh just on the day of the incident, but as new Investigating Officer had to add false facts subsequently, the

statement showing quite false facts has been got up by my name. It is not true that as my new statement was got up after creating quite bogus facts

by my name with regard to Shri Jamar and Valku, I have given false deposition in the court as stated therein. It is not true that although the facts as

stated in examination-in-chief have not taken place, I have stated false in the court as it was told to me. I do not know as to which officer had

recorded my statement. As long time has lapsed, I do not know as to where my statement was recorded. I do not know as to who was as a Dy.

S.P. at that time. It has not happened that Dy. S.P. might have interrogated me on the day of the incident. Dy. S.P. has not called me for

verification in my statement. It is not true that I state such false fact before the court that my statement has been really recorded. It is not true that

Shri Vagh has not called me or I having taken Tempo Trax, have not come or Valku has not been taken in such a way as I state.

(emphasis supplied)

10.10. Experts namely Professor and Medical Officer in Head of Pharmacology Department in M.P. Shah Medical College-Jamnagar, Dr.

Bharatbhai Kantilal Shah P.W.14 who was examined about the nature of ingredients and side effects and consequence of two medicines in his

examination-in-chief paragraphs 2, 3, 4 and 5 states as under:

(2) The empty wrappers of Mark C are of Lakam Plus tablets as per yadi. That which type of drug is used in this tablet, in which type of human

disease does this tablet is used, what effect is happened to a person on taking ten or twenty tablets together, and whether the death is occurred or

not ? And if the death occurs that due to what reason does the death is occurred. There are the wrappers of Tenkodet-2 in Mark D. That which

type of drug is used in this tablet, in which type of human disease does this tablet is used, what effect is happened to a person on taking ten or

twenty tablets together, and whether the death is occurred or not ? And if the death occurs that due to what reason does the death is occurred.

Such type of opinion was asked from me.

(3) On receiving of the samples of the aforesaid Marks C and D, that empty wrappers of the aforesaid medicines, among that baggy, there were

two empty wrappers of tablet locamplus in the baggy of C Mark. The contents of which are as below. It was of 1) Tripluoparizm - 5 mg. and 2)

Triexzifanidealer - of.... mg. This medicine is generally used in the disease called psychosis. There were two empty wrappers of the tablet

Tenkodet -2 in the cloth bag of Mark D. In which the content there was 1) Emipremin - 25 mg. and Diazepam - 2 mg. This tablet is generally used

for mental depression.

(4) Thus, looking to the medicines among the above C and D, total four medicines comes in it. Namely -1) Trifluoparazive -2) Triexifinil -3)

Emipremin - 4) Daizipham is included in it. Which comes in both.

(5) 1) As per my say, no any of these medicines causes an effect which occurs death if it is consumed in more quantity.

2) Some of the effects are such that it increases each other, where as some effects are opposite from each other.

3) The information which is given about the case are given in the above produced papers. And on going through the literature of the medicines, no

possibility is found which occurs the death, if all these four medicines are consumed in maximum quantity as it is shown.

4) If the death is occurred on consuming these medicines, then the possible reasons for the death might be 1 - Cardiac A - Ridhamiya or 2-

Convelzenols.

5) If the below given details are available then it is helpful for giving more conclusive opinion.

(A) The time on which the medicine is said to be given.

(B) Time of death

(C) Information about symptoms and case.

If laboratory test and Cardiogram is done than that. (if the deceased is dead after been admitted in the hospital)

(D) Reason of the death, if it is stated in P.M.

The empty wrappers which was received by me was sent back herewith in the sealed bag. I have given the original of mark 8/1 about which the

above opinion which I have given is produced in original, in which my signature and the stamp of designation is there, which I had prepared and

given by myself. Which is produced, by exhibit-99. As per my opinion, the death of a person is not occurred by consuming ten to twenty tablets

together of Locumplus, similarly the opinion of Tencodeft -2 is the same. The opinions of these medicines which I have given, are not counted in

poison, but it causes adverse effect. The empty wrappers of the medicines of the aforesaid Mark C and D of which I had given the opinion as

above were personally handed over to the police to Po. Const. - K.R. Rathod in the presence of Amitaben R. Kubavat, I am producing the office

copy from my record, in which there are the signatures of both. I am producing the above receipt with my letter of dt. 16-10-03, which is jointly

given exhibit-100. The above both the medicines are consumed in sedatives, in mental fear and in tension.

(emphasis supplied)

10.11. In his cross-examination by referring to certain American or Indian standard text books of Indian Pharmacopoeia or Pharmacology such as

Goodman and Gilman's", the expert answers certain questions and states that side effects of all such medicines mostly depend on the dose they

have consumed.

10.12. Dr. Arjun Gorabhai Rathod, P.W.15 who examined Valkubhai accused No. 3 and appellant herein in is examination-in-chief in paragraphs

1, 2 and 3 is as under:

(1) When I was present on my duty at the Civil Hospital at 06:00 "o clock in the morning on dt. 03-05-98, at that time Valkubha Lakhubha - age

25 years was brought for the treatment by his relatives. On asking to the patient, he had stated that, he had taken the tablets of the medicine named

Lokamplus""', had given such a history at 12:00 "o clock at night.

(2) On examining the patient, he was in complete consciousness. The patient was admitted in the Emergency Ward after giving the first aid. From

where he was discharged from the ward at 09:00 "o clock in the morning on dt. 05-05-98 by making the diagnosis about Unknown Poison ?

Sedative Poison ? After that, the samples of his vomit which were taken with its F.S.L. Report of Mark 7/18 were received by the letter from B-

Division Po. Stn. and on reading his Report of Treatment Certi., it was asked for in writing on dt. 16-06-98, I have brought that original letter,

which I produce, it is exhibit - 91. That F.S.L Report No. RFSL/TPN/98/T/814 of dtd. 05-06-98, in which there was a sample "E" bearing the

sample of the vomit of Valkubhai. I have given the certi. on looking to the Examination Report of 7/18 dt. 17-06-98, that no any Chemical Poison

has been found in that Report.

(3) According to this Report of F.S.L., no any type of poison - i.e. unknown or sedative poison is not found and is not taken or consumed, and the

original certi. of Po. Cont. D - Vanand Bhimabhai - Bkl. No. - 458 which has been described in exhibit -91 is given to produce in the Bail

Application. I have brought its office copy. My signature and stamp is done in it, which is produced by exhibit - 92. In the case papers of mine

which I have brought, that O.P.D. case papers are in my handwriting, in that no any abnormality were found in R.S.-that means Respiratory

System, CVX - that means Cardio Vascular System, CNS- Central Nervous System which is related to the brain and nerves system, and A.S. -

that means Abdominal System, the note of which I had done on the back side of case papers. Also both the pupils of the eyes were normal. His

B.P. was normal as stated in the case papers. Millimeters of H.P. - that means his temperature was normal. And Respiration Rates and pulse were

also normal. There is my handwriting in the case papers. The patient was in total consciousness and in normal condition when I had examined him.

I am producing that case papers of O.P.D., which is exhibit-92. The medicine Locumplus is the medicine which is taken as tranquilizers and for

tension and fear as sedatives. And if these type of medicines are taken in more quantity then there might be the possibility of vomiting and it may

not happen also. The presence of these medicines could be found if the sample of the vomit is taken within three to three and half hours after

consuming it. I have also brought the three papers with me about admitting of this patient as an indoor patient. I am producing the original - which

is given as exhibit - 94. At present I could not say that, which of the relative of the patient had brought the patient, as it is not entered in the case

papers in the history of the relatives of the patient.

(emphasis supplied)

10.13. Manubhai Popatbhai Jodiya, P.W.20 in his deposition states as under:

On 3.5.98, I was discharging duty as Deputy Mamlatdar and Executive Magistrate at Junagadh. On the same day, I had received a yadi to take

D.D. Of Valkubhai Lakhubhai Jaman with his being under treatment in Emergency Ward from the P.I. of Junagadh City "A" Division, in the case

of Ist Cr. Reg. No. 132/98 wherein my signature, date and time have been inserted. The time of 16-00 hours has been inserted. I have brought the

original with me today. I produce from my record. Exh. No. 214.

As I received the yadi, I had come at Government hospital Junagadh to take the statement of Valkubhai Lakhubhai Jaman being under treatment

as per the yadi, and had contacted Shri R.A. Musadiya who was on duty. That doctor had taken in the ward where the patient was and had

introduced him. It had been verified as to whether the patient was conscious or not and police and the relatives had been sent out from the ward

and Dr. Musaidya had made the remark of the patient being conscious before starting D.D., signature had been put and date and time had been

noted. I have recorded this D.D. In the form of question and answer. I had started this at 16-10 hours.

Question: On asking as to where you are, it had been replied that "in government hospital, Junagadh."

Question: What is your name? Answer: Valkubhai Lakhubhai Jaman.

Question: Are you married? Do you have children?

Answer: Yes, there are no children. The marriage has been solemnized before about three months.

Question: Are you educated ?

Answer: Yes, I have studied up to B.Com.

Question: What has happened to you? When has the incident occurred?

Answer: I had a fever since about five days. My wife told me that why are you not re-covering: I said that it is not in my hands. Some altercation

had taken place. I had consumed ten sleeping pills together at twelve o'clock at night. Thereafter, I slept. The name of the tablet was "Lucam

Plus". I registered consciousness at five o'clock in the morning. Thereafter, the P.I. Shri Vagh had brought me to government hospital. Vagh Sir is

of staff, he brought me here. At the time of the incident, that is to say, when I consumed tablet, there were my wife and I only two persons at

home. When I regained consciousness in the morning, my father and my mother were present at home.

Question : What is the reason of the incident ?

Answer : I have consumed poison for personal reasons. No person is responsible for the reasons for it. No scuffle had taken place between us,

husband and wife.

Question : Do you want to say anything further ?

Answer : I do not want to say anything further. I am putting the thumb-impression of my left hand for the true fact that I have dictated and

understood. (As bottle was administered upon the right hand, the thumb-impression of the left had has been taken.

After the D.D. was over, after making remark about the patient being conscious and after putting signature, time and date have been written (by

me). The said D.D. was completed at 13:35 hours and the patient Valkubhai has put the thumb-impression of left hand in my presence and I have

put my signature as before me being the Executive Magistrate. The copy of this D.D. has been produced vide Mark ""A"", I have brought the

original of the same and I produce the same. Exh. No. 215.

Before recording the D.D., a yadi for drawing the inquest-panchnama of the deceased Kailashben Valkubhai had been received from "A" Division

City Police Station, Junagadh. However, as the detail as to the inquest is not there in the summons today, (I) have not been able to bring the yadi

and the original papers of the same. I am shown the office-copy of the yadi for drawing the inquest-panchnama from the file of P.P. Wherein my

signature, date and time of 7:45 hours have been inserted. I identify the same. Exh. No. 216. With reference to the said yadi, I had gone to

government hospital and the panchnama of the dead body of Kailashben had been drawn there (in the presence of) the panchas Bhupatbhai,

Hemantbhai, Shaileshbhai, Bhupatbhai, Minaben w/o Dilipbhai Hiragar, Rakhi as lady-pancha, after seeing and knowing, as per the condition of

the dead body which was there in the emergency-room. The said dead body (of) Kailashben had been identified by her father Bavkubhai

Oghadbhai Vagh who was present. In the original Exh. -49, the signatures of all the three panchas and of mine as before me are there which is

shown. The time and date have also been inserted.

In his cross-examination n P.W.20 states as under:

It is not true that no yadi or papers have been received by me as I stated in the examination-in-chief or that I have not gone in the hospital in

connection with any such yadi or papers or that I have not recorded the dying declaration of any such person as I mentioned in the examination-in-

chief or that I have not drawn any such panchnama as I said, in the presence of any such persons as I mentioned or that such as person as I said

has not identified the dead body. It is not true that I have deposed in the Court as I was tutored and that later on have identified the papers

fabricated as per the wish of the police, dying declaration and in the to draw the inquest.

It is not true that I give a false deposition so as to suit the case of police as I have been asked.

(emphasis supplied)

10.14. Bhaskarrav Lakduji Vagh, P.W.21 in his deposition states as under:

(1) On 3-5-98, I was discharging duty as police Inspector at P.T.C. (Police Training College) at Junagadh since before two and a half years and

was residing at Hajur Bungalow, Quarter No. 3. At that time, Lakhubhai Najbhai Jamar had been performing duty as police inspector in Police

Training College Junagadh, since about one year before and was residing with his family in the Quarter No. 7 of Hajur Bungalow. During that

period, Kailashaba, the wife of Valkubhai, the son of Lakhubhai expired, hence police has recorded my statement in this regard in this case.

(2) On 3-5-98, Lakhubhai Jamar had come to my Quarter No. 3 at about half past five in the morning and had called me outside and had said that

my son Valku has consumed something, so I want to take him to hospital, please call a vehicle. Hence, I had called for government vehicle by

making a telephone-call from the phone which was there in my bungalow to the quarter-guard, the said vehicle had arrived at my house in ten to

fifteen minutes. Its driver was Bachubhai Gohil. Taking the said vehicle, I had gone to the Quarter No. 7 of the P.I. Jamar and taking Valkubhai

had gone to Junagadh Civil Hospital and had arranged for his treatment. At that time, Lakhubhai Jamar, the P.I. had not come to the hospital with

me.

(3) Thereafter, after half an hour, Lakhubhai Jamar had come to the Civil Hospital, Junagadh on his scooter and the mother of Valku, the father

and mother-in-law of Valku (were there) along with him and they had brought with them the wife of Valku - Kailashben and as the doctor

examined her in the hospital, he had informed that she was no more.

(4) Thereafter, leaving from the hospital, I had gone to my home. I have no idea as to what were the family-disputes of the P.I. Jamar.

(5) On the previous night of the incident, that is, on the night of 2-5-98, at about eight o'clock, when Shri Jamar and I met, he had told me that the

health of his son is not well.

(6) When Lakubhai Jamar came to my house in the morning, he had not told any other fact to me except that Valku has consumed something.

Nothing has been told of the Kailashben, the wife of Valku. It is true that I have clearly stated in the statement of mine recorded by police-officer

that my statement has been recorded as regards the incident of the death of Kailashben after consuming poison. It is true that I have dictated that

when Lakhubhai Jamar had come to call me, I had been told that my son has consumed poison. It is not true that as Lakhubhai Jamar and I are

working in P.T.C. together and as we are neighbours, I state falsely the fact of Lakhubhai Jamar not being with me when I took Valku to hospital

for helping them. It is not true that I state falsely the fact of Lakhubhai having come to hospital after half an hour.

In his cross-examination he states as under:

(7) It is true that I have been inquired by the Investigating Officer as the first responsible officer to reach the place of the incident. It is true that the

Investigating Officer had informed me that your statement is to be recorded as regards the fact that Kailashben has expired by consuming

poisonous medicine. It is true that on 3-5-98, after my police - statement was recorded by the Investigating Officer, the same had been given to

me to read and the officer D.Y.S.P. Had also verified this statement of mine. It is true that no further statement in respect of the incident except the

one of mine recorded by the Investigating Officer on 3-5-98 or no further statement in the form of the clarification of the incident has been

recorded in connection with the incident. It is true that no departmental memo has been given to me stating that false statement has been given by

me to save some accused related to this offence nor any steps of departmental inquiry has been taken against me. It is true that I have never been

inquired by me department till date regarding my statement of 3-5-98 that it is false or that it has been given falsely to save the accused by any kind

of notice or explanation. It is true that I have stated in my statement of 3-5-98 before police that ""today in the morning at half past five, Shri Jamar

had come to my Quarter No. 3 and had called me outside and had said that Sir, please call for a vehicle, my son Valku has consumed (poisonous)

drug, hence, I had called for a vehicle making a phone-call or quarter guard - P.T.C. and as the vehicle arrived after ten to fifteen minutes, (I) had

gone to the Civil Hospital, Junagadh, taking Valku with the driver Bachubhai Gohil and had arranged for his getting admitted"". I have also dictated

in my statement before police that ""subsequently after about half an hour, the officer Shri Jamar had come on scooter and had come taking along

the parents-in-law of Valku and the mother of Valku, the wife of Valku-Kailashba, after examining Kailashba, the doctor had stated of her having

expire."" Similarly, I have stated in my statement before police that ""thereafter, I had gone to my house, leaving the officer Shri Jamar with his son, I

do not have information regarding the family-dispute in the house of Shri Jamar but on the previous-night, that is, on 2-5-98 in the evening, Jamar

had told me that the health of my son Valku is not well, no other fact had been told."" It is true that my statement before police has been recorded

by the police-inspector, A-Division Police Station. I have never given any false statement in my career of police till date or have not followed

wrong procedure.

(emphasis supplied)

11. That the testimonies reproduced herein above extensively would reveal that though matrimonial life of the deceased with appellant was of three

months all customs and rituals were followed and she was permitted to go to her parental place and at the time of SSC examination Kailashben

was taken to her matrimonial home by her husband, the appellant herein and on completion of examination she was allowed to join her parents. No

ill treatment was ever meted out to her.

11.1. That as per deposition of mother of the deceased, Vasantben at Exh. 70 the appellant and his mother were in fact in favour of marriage with

Kailash and at their behest the marriage was finalised though elder brother and his wife were initially not in favour of the marriage.

11.2. The incident about damaging cupboard by elder brother of the appellant for which some grievances are raised, the fact remains that

compromise was reached and the appellant herein had no role in such dispute. Learned trial Judge has acquitted three co-accused having found no

evidence against them inasmuch as elder brother and his wife were not residing together with the appellant and deceased and even father of the

appellant was found to have not been involved in the crime. Even motive for crime is not surfacing on record.

11.3. Vasantben at Exh. 56 again stated that there was no system of dowry in their caste but on the contrary parents-in-law of the bride had to

give ornaments and other items. The nature of quarrel with elder brother-in-law and his wife of the deceased about various articles and ornaments

given to Kailashben, deceased was with a view to undermine social status of father-in-law of elder brother of appellant is not convincing to support

the theory of prosecution about motive etc.

11.4. On reading of testimonies of medical officer Dr. Kamlesh Jhala P.W.6 Exh. 56 confirms in cross-examination that there is no fracture on the

parts of respiratory system and no poison was found and possibility of natural death was not ruled out. About nature of injuries it could have been

inflicted by self also or by accidentally. The above aspect is believed by learned trial Judge. It is unsafe to hold that it was a case of culpable

homicide.

11.5. Dr. Bharatbhai Shah, P.W.14, Professor of Medical College have also deposed about consumption of medicines ordinarily used as

tranquilizer and consequences thereof. Dr. Arjun Rathod, P.W.15 who examined appellant-accused reveal nature of treatment and consequences

of consuming such medicines. Manubhai Jodiya, P.W.20, Dy. Mamlatdar and Executive Magistrate, Junagadh, who was examined upon an

application Exh. 198 given by learned counsel for defence under Section 311 of Code of Criminal Procedure, 1973 and was allowed by learned

Judge confirms to have recorded dying declaration Exh. 215, which ultimately was examined in the context of Section 157 of Evidence Act as the

accused surviving later on in which, the accused had explained no knowledge of death of his wife in view of over does of medicines taken by him

and thereafter he became unconscious.

11.6. That what is suspicious about conduct of the appellant is that he failed to produce prescription of the medicine by a Doctor for any ailment,

for which, such medicines are prescribed. However, consumption of above medicines namely Locumplus 10 tablet was never disputed and so

explained by the appellant that he had consumed the medicine around 12:00 hours at midnight. Besides, empty wrappers of above tablet was

found from the scene of panchnama and remained confirmed during testimonies by pancha of scene of offence.

11.7. In addition to above testimonies of Bachubhai Bhikhabhai P.W.12 driver of the police van in which appellant herein was taken to the hospital

reveal that father of the appellant remained at his residence and the above version is confirmed by Bhaskarav Vaagh P.W.21, a Police Inspector

who was discharging his duties at relevant point of time and instructed Bachubhai to hospitalize the appellant herein. The above witness also

confirm about father of the appellant remaining at residence. This would again show that complainant and other relatives were informed in person

about the incident and parents-in-law of the deceased waited for their arrival. Their version about father of the appellant had not accompanied

them along with Kailashben at the Hospital is not believable. Admittedly, on that unfateful day, the appellant herein was suffering from fever for

about 5 days and was not in healthy state of mind. That Jeetuben, mother of the appellant who also happen to be cousin of the complainant and

when the incident had taken place she was also at the residence was not examined by the prosecution.

12. All these factors in addition to explanation specifically rendered in Section 313 of Code of Criminal Procedure, 1973, by appellant-accused go

to show that burden was convincingly discharged by appellant-accused by giving proper explanation and was duly supported by independent

witnesses including experts whose opinion was partly believed by learned Judge but no benefit of doubt was given to the appellant.

13. That so far as the case law relied on by learned counsel for the parties respectively referred to in paragraphs 7 and 8 of the judgement, it is trite

that initially duty is cast upon the prosecution to prove its case beyond reasonable doubt and then in a case like this burden is to be discharged by

accused under Section 106 of Evidence Act when such accused is having knowledge about the circumstances leading to death where being a

husband he was last seen together with his wife who was found dead. Even circumstances are not established forming chain of events leading to

inescapable guilt of the accused or ruling out is innocence.

14. Thus, upon careful appraisal and rather re-appreciation of evidence on record persuade us to give benefit of doubt to the appellant herein as

much as the appellant has discharged the burden cast upon him under Section 106 of Evidence Act by giving convincing and cogent explanation as

born out from the medical evidence and other corroborative evidence including that of scene of panchnama. That suspicious circumstances leading

to death of deceased Kailashben howsoever strong may be, for which, no evidence has come on record proving the case of the prosecution

beyond reasonable doubt and therefore, we deem it just and proper to allow this appeal under Section 374(2) of Code of Criminal Procedure,

1973 by quashing and setting aside the judgement and order of conviction and sentence impugned in this appeal by acquitting the appellant of the

charges framed against him.

15. The conviction dated 13.1.2011 passed by learned Additional Sessions Judge & Fast Track Court No. 2 at Junagadh in Sessions Case No.

87 of 1998 wherein the appellant is directed to undergo the sentence for rigorous imprisonment for life and fine of Rs. 1000/- and in default of the

same, further simple imprisonment for one month for the offence punishable under Section 302 of Indian Penal Code is hereby quashed and set

aside.

16. Bail bond, if any, shall stand cancelled.

17. Accused is set at liberty, if not required, in any other criminal cases.

18. R & P to be sent back to the trial court forthwith.

19. Direct service is permitted.