IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 8 of 2023

With

R/CRIMINAL APPEAL NO. 1288 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR.JUSTICE P. M. RAVAL Sd/-

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Approved for Reporting	Yes	No
	Yes	

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STATE OF GUJARAT
Versus
NARESHBHAI S/O AMARSINHBHAI KORI & ANR.

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Appearance:
MR L B DABHI, APP for the Appellant(s) No. 1
MR RM PARMAR(6017) for the Respondent(s) No. 1,2

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 14/10/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. The death reference has come up before this Court for confirmation of a death sentence awarded to the appellants by judgment dated 01.04.2023, passed in Sessions Case No.198 of 2020, whereby, the Additional Sessions Court, City Sessions Court, Ahmedabad has convicted the appellants viz. Naresh Kori and Pradeep Kori, under Section 302, 323 Indian Penal Code read with Section 34

of the Indian Penal Code and sentenced to death for the commission of murder of one Pankajbhai resident of Ahmedabad.

2. The appellants herein have also questioned the legality and correctness of the judgment of conviction and order of death sentence by preferring conviction appeal.

3. The prosecution case, in nutshell, is that;

3.1 The appellants are real brothers, residing in the area of Ishanpur, Ahmedabad. The deceased Pankaj Pandurang Patil was the neighbour of the appellants. On 24.08.2019, at about 07:00 o'clock evening, the deceased Pankaj raised the dispute with regard to theft of petrol from his bike allegedly done by the appellants accused and on this issue, he slapped to the accused A2 Pradeep Kori. The dispute aggravated to the extent that the family members of the deceased viz. PW:7 Pandurang Patil, PW:8 Naina Patil and PW:9 Suman Patil came to rescue, as a result, the accused Naresh Kori, caused a voluntary injuries to PW:7 by using weapon iron pipe and also gave a kick blow to the PW:9 Suman Patil. After this incident, the deceased Pankaj again came out from his house at about 09:30 p.m., and came to place of incident i.e. near the grocery shop of the society, where again he entered into verbal exchange of words with the accused, as a result, A2 Pankaj Kori threw a plastic bottle filled with petrol on the deceased Pankaj and thereafter, the A2 went to his house, took a bottle of kerosene and poured it upon the deceased Pankajbhai and set him on fire. On account of hue and cry, the neighbours tried to extinguish the fire. I In the emergency ambulance, Pankajbhai was taken to the L.G. Hospital, Ahmedabad

and was admitted there at about 12:05 a.m. The hospital authority informed the police. The Ishanpur Police, after receiving the requisition from the hospital, came to hospital and called the nearest Executive Magistrate, PW:13 for recording the statement of the deceased. PW:13, after arriving at the hospital, consulted the duty doctor about the mental condition of the deceased, who made an endorsement that the deceased was conscious and in fit state of mind to give statement. PW:13, Executive Magistrate, thereafter, after preliminary inquiry, satisfied himself about the consciousness and fit state of mind of the deceased and recorded his statement in question and answer form. After recording the statement by the Executive Magistrate, the Head Constable of Ishanpur Police Station, PW:14 Jorsingh Solanki, recorded the statement of deceased Pankajbhai in the form of FIR.

3.2 The offence under Sections 307, 323 of Indian Penal Code and Section 135 of the G.P. Act came to be registered against the appellants accused with Ishanpur Police Station, Ahmedabad. The I.O. of the case PW:16, proceeded to investigate the case and during the investigation, he recorded the statements of the witnesses, drew the panchnama of scene of occurrence in the presence of scientific officer and collected necessary samples for the forensic analysis. Pending the investigation, the deceased Pankajbhai succumbed to injuries on 04.09.2019 at about 04:40. The I.O. prepared the inquest and sent the dead body for post-morterm and made a report to the Jurisdictional Magistrate for addition of offence of murder punishable under Section 302 Indian Penal Code and accordingly, the offence under Section 302

being registered against the appellants accused. The appellants were arrested. The I.O. thereafter, collected the medical case papers, sent the seized articles to the FSL, Ahmedabad for chemical analysis and after obtaining the final report of the FSL, he filed the chargesheet against the appellants before the Metropolitan Court, Ahmedabad.

As the case was exclusively tribal by the Court of Sessions, the Metropolitan Magistrate committed the case to the Court of Sessions at Ahmedabad.

The Sessions Court framed the charge against the appellants accused. The accused in their respective statements did not admit the charge and claimed to be tried.

4. The prosecution, in order to prove the charge, adduced the following oral evidence in support of its case:

Oral evidence

PW 1 – Exh.8	Dhavalbhai Bharatbhai Lodha, Panch witness
PW 2 – Exh.10	Jayantibhai Maganbhai Jhanjhuria, Panch witness
PW 3 – Exh.19	Vikrambhai Kalidas Patil, Panch witness
PW 4 – Exh.22	Irshadahmed Khalilahmed Ansari, Panch witness
PW 5 – Exh.30	Ilyas Valibhai Patel, Panch witness
PW 6 – Exh.33	Parshotambhai Jaisinghbhai Verma
PW 7 – Exh.34	Pandurangbhai Kashinath Patil, Father of deceased
PW 8 – Exh.35	Naynaben Pandurangbhai Patil, Mother of deceased
PW 9 – Exh.36	Sumanben Kashinath Patil, Grandmother of deceased
PW 10 – Exh.37	Dr. Brijesh Narayanbhai Chouhan
PW 11 – Exh.40	Shailesh Kanubhai Prajapati
PW 12 – Exh.44	Dr. Parthik Shaileshbhai Chouhan
PW 13 – Exh.47	Shambhubhai Goabhai Rabari
PW 14 – Exh.50	Jorsinh Amarsinh Solanki

PW 15 – Exh.55	Chintan Sanjaykumar Modi
PW 16 – Exh.59	Jaisinghbhai Madhubhai Solanki, IO

5. The following piece of documentary evidence were adduced by the prosecution:

Documentary evidence

Exh.9	Panchnama of clothes of accused and deceased
Exh.11	Panchnama of place of offence
Exh.20	Inquest panchnama
Exh.23	Panchnama of clothes of accused Pradeep Kohri
Exh.38	PM Yadi and cause of death
Exh.39	PM Note
Exh.41	Medical Certificate
Exh.42	Indoor registration number-34700 case paper
Exh.43	Dying Declaration Yadi from list number 43
Exh.44	DD Carbon copy
Exh.45	Medical Certificate
Exh.48	DD Yadi
Exh.49	Original DD
Exh.46	Xray report
Exh.51	LG Hospital Original list
Exh.52	Original Complaint
Exh.53	Crpc Section 157 report
Exh.56	FSL Letter
Exh.60	FSL officer inspection of place of offence
Exh.61	Report of place of offence by FSL
Exh.62	Amendment to Section 302 and 34 of IPC
Exh.63	Map of place of offence
Exh.64	Forwarding notes and letter

6. After closure of the prosecution evidence, the statement of the accused under Section 313 of Cr.P.C. was recorded to which they stated that they have been falsely implicated in the offence and they are innocence.

7. Though opportunity was extended, no oral evidence being adduced by the appellants accused.

The trial court's findings

8. After hearing the parties and upon appreciation of the material evidence, the Trial Court held guilty the accused for the murder of deceased Pankajbhai punishable under Section 302 Indian Penal Code. The Trial Court mainly relied on the dying declarations of the deceased and while placing implicit reliance on the dying declarations, the Trial Court satisfied that the deceased was in a fit state of mind to narrate the correct facts of the incident and dying declarations are true and reliable and free from all the doubts and are not result of tutoring. So far as sentence is concerned, the Trial Court while awarding the death sentence recorded that, the offence is gruesome and act is fall in the category of rarest of rare cases. The learned Trial Court has referred the judgment of the Hon'ble Supreme Court rendered in the case of **Machi Singh Vs. State of Punjab (1983 (3) SCC 470)**, and referred certain relevant consideration and came to a conclusion that the crime committed by the accused is heinous crime and extreme penalty of death is required to be inflicted.

9. Being aggrieved with the judgment of conviction and order of sentence, the appellants accused have come up with the present appeal.

10. **Oral evidence adduced by the prosecution:**

10.1 Pandurang Kashinath Patil (PW:7): This witness is the father of the deceased Pankaj and at the relevant time, he was doing his job as a

Driver of loading tempo and the deceased was his helping hand. The witness in his chief examination, has stated that on 24.08.2019, he was at home and his son Pankaj left the house around 07:30 p.m. and scuffle took place between Pankaj and accused herein near the grocery shop. The witness has stated that thereafter, he came out from the house along with his wife and mother and explained the accused Naresh and Pradeep and tried to short-out the issue and in that process, A1 Naresh assaulted him with iron pipe and then, gave a kick to his mother and the accused A2 Pankaj brought a cane of kerosene and poured it on my son Pankaj and while I was taking my mother at home, he set ablaze my son Pankaj. He has further stated that, my son also told me that he was burnt alive by the accused Pradeep. The witness has further stated that he along with other neighbours, tried to extinguish the fire and then, after arrival 108 emergency, Pankaj was taken to the hospital. The witness has further stated that before they could reach the hospital, deceased Pankaj told him that accused Pradeep was extracting petrol from his bike and when he asked not to do such things, he was burnt alive by the accused. The witness has further stated that in the incident, he also sustained injuries and treated at the hospital. The witness has identified both the accused in the Court and also identified the burnt clothes of his son.

In the cross examination, witness PW:7 has denied to the suggestion that he did not have seen the incident and his son Pankaj has not told anything about the incident and act of the accused. The witness has denied to the suggestion that at the time of incident, he was not present but he was at home. The witness has admitted the fact that

his son has sustained 90% burnt injuries.

10.2 Nainaben Pandurang Patil (PW:8): This witness is the mother of the deceased Pankaj. In the chief examination, witness has stated that on 24.08.2019 at about 07:00 o'clock, his son had an argument with accused Pradeep and Naresh and the reasons for the dispute was extracting the petrol from the bike by the accused. The witness has further stated that after the said incident, his son went near the grocery shop of the society where accused were also there and again scuffle took place between them and upon hearing the hue and cry, she along with her husband and mother in law came to place of the incident where the accused Naresh slapped her husband and also hit him with the iron rod and her mother-in-law was also given a kick blow by accused Naresh. The witness has further stated that she along with her husband tried to sort out the matter and after some time, his son left the house and again the quarrel took place with the accused, as a result, the accused Pradeep sprinkled kerosene on his son and set him on fire. The witness has further stated that she along with neighbours tried to extinguish the fire and after arrival of the emergency ambulance, his son was taken at the L.G. Hospital for treatment and during the treatment, his son orally said that the accused Pradeep by sprinkling petrol and kerosene burnt him alive.

In the cross examination, the witness PW:8 has admitted that after their leaving from the place, her son Pankaj was burnt by Pradeep. It has been denied by the witness that her son was burnt due to some other reasons and accused have been wrongly implicated by

filing a false case.

10.3 Suman Kashinath Patil (PW:9): This witness is the grand-mother of deceased Pankaj and at the relevant time, she was residing in the joint family with his son. In the chief examination, she has stated that Pankaj had a quarrel with the accused on the issue of petrol and due to intervention of the family, the matter was settled, but it was again cropped up at about 10:00 o'clock, when Pankaj went nearby the grocery shop of the society where she along with her son and daughter in law were beaten by accused Naresh and in that scuffle, Pankaj was burnt alive by the accused Pradeep.

In the cross examination, the witness PW:9 admitted that when the incident of burning took place, she was not there at the place, but she was at home.

10.4 Dr.Brijesh Naranbhai Chauhan (PW:37): This doctor had conducted the post-morterm on the body of the deceased Pankaj. The witness has stated in his chief examination that on 05.09.2019 with the help of penal doctor, he conducted the post-morterm on the body of the deceased. During the post-morterm, the witness has noticed second and third degree burn injuries and percentage thereof was 92 to 94%. According to opinion of the doctor, the cause of death was burn injuries and its complications.

In the cross examination, the doctor has admitted that he found the burn injuries on the neck and inside the mouth of the deceased, as a result, the deceased could not speak properly.

10.5 Dr.Shailesh Kanubhai Prajapati (PW:11): This doctor being a Residence Medical Officer of L.G. Hospital, Ahmedabad has been examined to prove the treatment given to the deceased. The witness in his chief examination has stated that the deceased Pankaj was admitted on 25.08.2019 in the burns and plastic department of the L.G. Hospital and succumbed to injuries on 04.09.2019 at about 04:40. The witness has further stated that the deceased at the time of admission, gave a history of the incident that, he was set on fire by pouring kerosene near his house. The witness has stated that upon examination of the patient, the treating doctor found 90% burn injuries on the body of the deceased. The witness has stated that the treating doctor Mr. Dhruv had gone for further study and on the basis of the case papers, he is giving deposition. The witness has further stated that before the dying declaration could be recorded, the duty doctor Mr. Dhruv at the request of Executive Magistrate, made an endorsement on the papers to the effect that "patient is conscious, cooperative and well oriented to time, place and person" and after completion of recording of dying declaration, the doctor again made an endorsement about consciousness and mental condition of the deceased.

In the cross examination, the witness has stated that at the time of admission of the deceased, he was not present in the hospital and he had not personally treated the patient, nor, was having any knowledge about the mental state of mind and consciousness of the patient Pankajbhai.

10.6 Dr.Parthik Shaileshbhai Chauhan (PW:12): This witness was on

duty with L.G. Hospital when the witness Pandurang Patil (PW:7) was brought before him for treatment. The witness in his chief examination has stated that, the patient in the form of history, has stated before him that he was beaten by the opposite party near his house. The witness has stated that upon examination of the patient, he found swelling on his neck and bruise injuries on the left arm. The witness has further stated that he noticed the injuries in the nature of CLW on the left elbow (3 x 0.3 x 0.2). The witness has further stated that the injuries over the left elbow sustained by the patient could be possible by iron pipe.

10.7 Sambhubhai Govabhai Rabari (PW:13): This witness had recorded the dying declaration of deceased Pankaj in LG Hospital, Ahmedabad as he came at the hospital on the basis of requisition calling him by Ishanpur Police. In the chief examination, the witness has stated that on 25.08.2019, he had been called by the Police Constable Jorsingh Amarsingh (PW:14) and informed him about the recording of the dying declaration. The witness has stated that he went to L.G. Hospital and obtained the opinion of the duty doctor about the mental fitness and consciousness of the deceased. The witness has stated that the duty doctor made an endorsement that the patient is fully conscious and able to give statement and further endorsed that the patient is conscious, cooperative and well oriented to time, place and person. The witness has further stated that he himself satisfied that the patient was in a fit state of mind to make declarations. The witness has further stated that the patient on asking, had given his name and then, replied to his question mentioned at Sr.Nos.4 to 13 in the dying

declaration. The witness has further stated that on the incident aspect, the patient gave a statement before him that:

> *"By driving a loading rickshaw, I and my father earning our livelihood. On 24.08.2019, at around 22:30 p.m., Naresh and Pradeep Kori were sitting on my bike and after seeing them, I asked them whey did u take petrol from my bike. They threw stones and poured petrol on me, as a result, I sustained burn injuries. Both the brothers are responsible for this. They forcefully poured petrol on me and ran away."*

The witness in his chief examination has further stated that after recording the aforesaid statement, the same was read over to him and after confirming the correctness of the statement, the patient put his signature on the statement and thereafter, he also put his signature and after completion of recording of dying declaration, he again obtained endorsement of the duty doctor about the fitness of the patient. The witness has produced the requisition of the police at Exh.48 and the original dying declaration at Exh.49.

In the cross examination, the witness Executive Magistrate has stated that the police did not inform him about the facts of the incident when the police came at his home. The witness has stated that in the printed form along with the certificate, he recorded the statement.

10.8 Jorsingh Amarsingh Solanki (PW:14): This witness at the time of incident, was serving as an Assistant Sub Inspector with Ishanpur Police Station, Ahmedabad and on 25.08.2019, when he was on night duty, the requisition being received from L.G. Hospital about the

admission of the deceased Pankajbhai Patil inter alia stating that he was brought to the hospital for the treatment of burns injuries. The witness has further stated that on receiving the requisition, he went to L.G. Hospital where he saw the patient Pankaj, in the burns department. In order to record his statement, the witness by written requisition, called the Executive Magistrate Mr.Rabari (PW:13). The witness has further stated that after recording the statement by the Executive Magistrate, he inquired the facts of the incident from the patient Panakjbhai and recorded his statement and at the relevant time, while recording the statement, the patient was conscious and fit state of mind. The witness has further stated that in the statement, the patient Pradeep inter alia stated that,

> *"on 24.08.2019, I was at home and at about 10:00 o'clock, I left the home and while reaching nearby the grocery shop, Pradeepbhai and Nareshbhai, who live next to him, were extracting the petrol from my bike and a fight arose with them when I asked that why did you extracting the petrol. Meanwhile, my parents came there and tried to settle and short-out the issue, as a result, Pradeep and Naresh assaulted my father and Pradeep thereafter brought a plastic bottle filled with the kerosene and poured on me and set me on fire with matchstick. Meanwhile, someone called 108 ambulance and I have been admitted in the L.G. Hospital."*

In the chief examination, the witness has produced the original complaint at Exh.52.

In the cross examination, the witness has admitted that the

deceased Pankaj in his complaint has disclosed that on the issue of extracting petrol from his bike, the deceased was asked to take the petrol from another bike from the parking area, as a result, he got annoyed and slapped the accused Pradeep Kori. The witness has further stated that in the complaint, it was disclosed by the deceased that there was heated exchange of words in the loud manner. The witness has further stated that at the time of recording complaint, the father of the deceased was remained present.

10.9 Jesingh M. Solanki (PW:16): This witness after registration of the FIR with Ishanpur Police Station, had investigated the case and after completion of it, filed a chargesheet against the accused. The witness was posted as Police Inspector with the Ishanpur police station. The witness in his chief examination has stated that at the relevant time, he was on leave and primary investigation was undertaken by S.M. Patel, In-charge P.I., and after resuming duty, he again took over the investigation of the case. The witness has stated that in this case, the panchnama of scene of occurrence in the presence of scientific officer being done and at the instance of the officer, the samples from the place were collected. The witness has stated that he arrested the accused and collected and seized their clothes as well as weapon iron rod. The witness has further stated that after the death of deceased Pankajbhai, the dead body was sent for post-morterm and the report for addition of Section 302 of Indian Penal Code was being submitted to the Court concerned. The witness has stated that during the course of investigation, he recorded the statements of witnesses, obtained the copy of dying declaration recorded by the Magistrate, kept the FSL

report with the papers and after completion of the investigation, he filed the chargesheet against the accused.

In the cross examination, the I.O. has admitted that in the complaint, the deceased had not disclosed about throwing stones on him by the accused. He also admitted that he did not find the presence of petrol and/or kerosene on the clothes of the accused. The witness I.O. has admitted that during the investigation, he has not recovered the cane of kerosene from the accused.

Submissions on behalf of the appellants-accused:

11. Mr. R.M. Parmar, learned counsel appearing for and on behalf of the appellants-accused made following submissions:

(a) That, the trial court committed serious error in holding the appellants-accused guilty of the offence of murder and causing voluntary injury, punishable under Sections 302 and 323 Indian Penal Code.

(b) That, the learned trial court grossly erred while convicting the appellants-accused, without appreciating the evidence in its right perspective.

(c) That, the case of the prosecution hinges on two dying declarations namely, one is recorded by the Executive Magistrate (Exh.49) and second one is recorded by the Police in the form of FIR (Exh.52). That, the learned trial court failed to appreciate the contents of both the dying declarations in its true perspective as admittedly,

medical evidence shows that, the deceased was having 92 to 94% burn injuries and he was having serious burn injuries in the mouth as well as on the neck side and in this situation, it is difficult for the deceased to clearly narrate, understand the questions and answers put to him by the concerned authority. Thus, it clearly establish that, at the relevant time, deceased was not fully conscious and not in a fit state of mind to make declaration. That, the doctor who made an endorsement, has not been examined and the person who deposed for and on behalf of L.G. Hospital, PW.10 – Dr. Shailesh Prajapati, was not having any personal knowledge, as at relevant time, neither he had given any treatment to the deceased, nor, he was present when the endorsement of consciousness and fit state of mind being made by Dr. Dhruv and therefore, the prosecution failed to prove that both the dying declarations are true, genuine, reliable and stating true story and free from all the doubts.

(d) That, the father of the deceased PW.7 was present when police recorded the statement in the form of FIR and in that view of the matter, considering the detailing of the FIR would raise the inference that at the behest of the father, the police recorded the statement which creates suspicion and that too, without the presence of the duty doctor, as at relevant time, the duty doctor was available at the hospital.

(e) That, contents of both the dying declarations differ from each other on material aspect and they are inconsistent, for which there was no reasonable explanation for the difference in the statements. In the first dying declaration recorded by the Magistrate (Exh.49), the

allegation was to the effect that by sprinkling petrol, the deceased was burnt alive. That, in the statement, out of two accused, who had sprinkled the petrol, that has not been clearly come out from the mouth of the deceased. In the second dying declaration recorded by the police (Exh.52), the allegation made to the effect that, the A2 – Pradip threw a bottle filled with petrol on the deceased and after some time, when quarrel took place, A2 – Pradip brought a cane of kerosene from his home and poured it upon the deceased and set him on fire by igniting matchstick. In the first dying declaration which was recorded by the responsible officer, the deceased did not specify the role attributed to the appellants-accused and thereafter, in the FIR, the role of the accused being specified and that too, in the presence of the father (PW.7) which facts demonstrates that, both the dying declarations are not true, voluntary, reliable and does not reflect the true story of the incident and same cannot be basis for recording the conviction of the appellants-accused. In this context, it was submitted that, the investigating officer (PW.16) in the cross-examination, has admitted that, he was unable to collect the plastic cane/bottle allegedly used by the accused. In other words, the plastic cane filled with kerosene has not been seized and recovered which is relevant and material evidence to connect the accused in the crime and on that ground, the story involving the accused Pradip cannot be accepted as a relevant and substantial evidence to prove his complicity in the crime.

(f) That, A1- Naresh Kori has been wrongly convicted for the offence of murder. There is no allegation made against the A1 that, either he sprinkled the petrol, or kerosene upon the deceased Pankaj

and set him on fire. It was the deceased who slapped accused Naresh because the deceased was annoyed by the alleged theft of petrol from his bike which incident of slapping, escalated further when the family members of the deceased came at the place of incident. Thus, the conviction of the accused Naresh with the aid of Section 34, without there being any evidence of sharing common intention, his conviction and sentence is not sustainable in the eye of law.

(g) That, the parties were neighbours and due to small issue of theft of petrol from the bike of the deceased, the deceased himself lost control and slapped the accused Naresh-A1 which led to quarrel between the parties and after the intervention of the family members of the deceased, the matter was resolved, but after some time, the deceased again came from his house at the place of occurrence and taking the dispute of theft of petrol, he started quarrel with the accused which resulted into unfortunate incident. Thus, in this background, the learned trial court could not have held guilty the accused for the offence of murder as having regard to the background facts of the dispute, the act by which the death was caused, was not done with the intention of causing death or causing such bodily injury as is likely to cause death.

(h) That, the witnesses examined by the prosecution are highly interested and related to the deceased and independent witnesses were available, but purposely, they were not examined by the prosecution which creates a doubt about the prosecution story. That, the witnesses were not present when the main incident of setting fire arose as after

they left the place, the incident of pouring kerosene and setting the deceased on fire being taken place and the said facts being admitted by the witnesses in their cross-examination which clearly proves that, the prosecution miserably failed to prove the reliability and truthfulness of both the dying declarations and in absence of any corroboration, no conviction can be recorded.

12. In such circumstances, as referred above, Mr. Parmar, learned counsel submitted that, the prosecution has failed to prove its case beyond reasonable doubt by adducing cogent, acceptable and trustworthy evidence and as such, the judgment of conviction and sentence is liable to be set aside. So far as sentence of death penalty is concerned, the present case does not fall in the category of rarest of rare cases and the trial court failed to appreciate the settled law on the aspect of awarding death sentence because in awarding death sentence, there must be existence of aggravating circumstances and consequential absence of mitigating circumstances for which in the sentence part, the trial court did not assign special reasons and on that count, the sentence of death penalty is liable to be set aside.

Submissions on behalf of the State:

13. On the other hand, Mr. L.B. Dabhi, learned Additional Public Prosecutor for the respondent-State vehemently opposed the appeal and contended that, the trial court has not committed any error while relying on two dying declarations of the deceased as before accepting the relevant facts of dying declaration, the trial court was satisfied that, the deceased was in a fit state of mind to narrate the correct facts of the

occurrence and the factum of dying declaration which is found to be truthful and reliable. That, the dying declaration recorded by the Executive Magistrate and statement in the form of FIR recorded by the police does not have any infirmities and the declarations are not result of tutoring, prompting or imagination. That, both the dying declarations are consistent in material particulars and merely non-mentioning of the name of accused on the aspect of throwing petrol would not render the statements of the deceased suspicious and unacceptable. That, the deceased was died after 9 days of the incident which fact itself proves that, at relevant time, he was capable of giving statement. That, the Executive Magistrate as well as the police authority themselves satisfied before recording the statements that deceased was in a fit mental state of mind to answer the question and therefore, non-examination of the duty doctor who had made an endorsement on the requisition of the Executive Magistrate would not itself a ground to reject or discard the contents made in the statements of the deceased which is otherwise truthful and inspiring confidence.

14. In such circumstances, the State counsel submitted that, the findings of conviction recorded by the trial court are based on the evidence and in consonance with the settled law propounded by catena of decisions of the Supreme Court. Thus, therefore, it was submitted that, no error either on law or on facts could be said to have been committed by the court below in holding the accused – appellants guilty of the offence of murder and causing injury to the witness. So far as sentence is concerned, it was submitted that the trial court has assigned proper and sufficient reasons for awarding the death sentence.

Thus, therefore, it was prayed that, there being no merits in the appeal filed by the accused and same may be dismissed.

Analysis and findings:

15. We have heard at length learned counsel for the parties and perused the case records and findings of conviction and sentence recorded by the trial court.

16. In the facts of the present case, the incident as alleged being taken place on 24.08.2019 at the place mentioned in the panchnama of scene of occurrence. The accused – appellants and the deceased Pankaj and his family were neighbours. In the entrance of the housing society, there was a grocery shop and nearby the shop, the deceased had parked his bike. According to prosecution case and evidence, the accused were sitting on the bike of the deceased and at about 7 o' clock in the evening, the deceased Pankaj left his house and came to the parking place where he saw that the accused extracting petrol from his bike, as a result, after heated exchange of words, the deceased slapped the accused Naresh, which further escalated the dispute and after hearing hue and cry, the father, mother and grandmother of the deceased came to his rescue and due to their intervention, matter was resolved. It is evident that, when the family members intervened, the accused Naresh gave a blow on the hand of PW.7 father of the deceased with weapon – iron pipe and also gave a kick blow to the grandmother of the deceased. In such circumstances, we come to a conclusion that initially at about 7:00 p.m., the quarrel took place because of theft of petrol and it was resolved amicably. The main incident arose at about 9:30 p.m.

The deceased Pankaj after the first incident, went to his house and thereafter, he again came at the scene of offence where the accused were present near the grocery shop and at that time, according to prosecution case, the deceased was burnt alive by pouring kerosene upon him. It is in this background facts and evidence, the issue arise for our consideration as to whether the two dying declarations wherein the deceased made the allegation against the accused to the effect that, by pouring kerosene and/or petrol, the accused set him on fire by igniting matchstick, can be held to be voluntary and relied upon to convict the appellants?

17. In order to consider the question, it is just and necessary to notice the contents of both the dying declarations.

(a) Dying declaration (Exh.49) recorded by the Executive Magistrate (PW.13) Shambhubhai Rabari:

> *"By driving a loading rickshaw, I and my father earning our livelihood. On 24.08.2019, at around 22:30 p.m., Naresh and Pradeep Kori were sitting on my bike and after seeing them, I asked them whey did u take petrol from my bike. They threw stones and poured petrol on me, as a result, I sustained burn injuries. Both the brothers are responsible for this. They forcefully poured petrol on me and ran away."*

(b) Dying declaration in the form of FIR (Exh.52) by the PW.14 – Jorsingh Solanki:

> *"on 24.08.2019, I was at home and at about 10:00 o'clock, I left the home and while reaching nearby the grocery shop, Pradeepbhai and*

Nareshbhai, who live next to him, were extracting the petrol from my bike and a fight arose with them when I asked that why did you extracting the petrol. Meanwhile, my parents came there and tried to settle and short-out the issue, as a result, Pradeep and Naresh assaulted my father and Pradeep thereafter brought a plastic bottle filled with the kerosene and poured on me and set me on fire with matchstick. Meanwhile, someone called 108 ambulance and I have been admitted in the L.G. Hospital."

18. We have carefully examined the case records and findings on the aspect of two dying declarations recorded by the trial court. In the first incident, when the family members of the deceased intervened, the accused A1- Naresh by giving a blow on the left hand of PW.7 who is the father of deceased, causing voluntary injury to him and as per the medial evidence, the injury was simple in nature. Thus, the case against the accused – A1 Naresh causing voluntary injury to PW.7 is proved and established. There is no role attributed to the accused Pradeep in causing voluntary injuries to the witnesses as he did not have played any role so far causing injuries to the witnesses is concerned. The presence of the witnesses who are family members of the deceased at the place, was natural because the place of incident and their residence are at the minimal distance and they could easily hear the voice from the place of incident and therefore, their presence cannot be doubted. So far second incident of burning alive the deceased is concerned, the witnesses in their cross-examination have stated that, after they left the place, the incident of burning being taken place. However, the fact remains that, the deceased Pankaj after the

incident, orally stated before them that, he was burnt alive by the accused and said oral statement cannot be ignored and is relevant to prove the complicity of the accused. In such circumstances, we have to appreciate and consider the oral dying declaration of the deceased and the dying declaration recorded by the Executive Magistrate and police.

19. Before we advert to the actual admissibility and credibility of the said dying declaration, it will be beneficial to refer the case law on the evidentiary value of the dying declaration. In *Paniben vs. State of Gujarat (AIR 1992 SC 1817),* the principles governing the appreciation of dying declaration have been discussed and summed by the Supreme Court in the following proposition:

> *"17. The principal contention is that at the relevant time, deceased was not in a position to make her statement as she was not in a fit state of mind. Undisputedly, in the present case, conviction is based solely on the dying declaration Exh.:41, and therefore, it will be fruitful to refer the principles governing the appreciation of dying declaration, discussed and summed by the Supreme Court* ***(Paniben Vs. State of Gujarat, AIR 1992 SC 1817)*** *in the form of following propositions:*
>
> > *"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*
> >
> > *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.*
> >
> > *(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a*

fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted."

20. In short, the law on the issue of dying declaration can be summarized to the effect that, in case the court comes to a conclusion that, the dying declaration is true and reliable and has been recorded by a person at the time when the deceased was fit physically and mentally to make declaration and it has not been made under any tutoring/duress/prompting, it can be sole basis for recording conviction.

21. The facts of this case are to be considered on the touchstone of the law which has been laid down by the Supreme Court in its various judgments. In our opinion, after careful examination of the dying declarations recorded by the Executive Magistrate and police authority, we do not find any serious infirmities in the two statements i.e. Exh.49 and Exh.52 of the deceased. In both the statements, deceased had categorically stated that, he was burnt alive by pouring kerosene/petrol and set on fire. In the first dying declaration (Exh.49), the word "kerosene" is missing and in the second dying declaration, it has been specifically stated that, the accused Pradeep brought a cane of kerosene and after sprinkling the same on him, he set on fire. In the first statement, no any specific name of the accused being stated in causing burn injuries, however, the fact remains that, the deceased was burnt alive. The deceased was having 90% burn injuries all over the body. The deceased when brought to L.G. Hospital after midnight, his statement was recorded by the Executive Magistrate and at that time, the duty doctor remained present and he made an endorsement about the mental fitness and consciousness of the deceased and the doctor also made a further endorsement that the patient is well oriented about the time, place and incident. The incident arose on 24.08.2019 and the deceased succumbed to his injuries on 04.09.2019. The first dying declaration was recorded within 3 to 4 hours of the incident and thereafter, within 15 minutes, the second dying declaration came to be recorded by the police. The doctor who had made the endorsement was not testified because of his non-availability, but the production witness on the basis of records and familiarity of the handwritings of duty

doctor Mr. Dhruv, he opined that, though the deceased was having 90% burn injuries, he could understand the questions and was able to reply to it. One of the argument advanced that, it could not be possible for a person suffering from 90% burn injuries to give the statement. In the case of **Mafabhai Nagrabhai Raval vs. State of Gujarat (AIR 1992 SC 2186)**, beforethe Supreme Court, the question arose with respect to whether a person suffering from 99% burn injuries, could be deemed capable enough for the purpose of making a dying declaration. The Supreme Court while affirming the conviction, held and observed that, unless there existed inherent and apparent defect, the court could not have substituted its opinion for that of the doctors and in light of the facts of the case, the dying declarations were found to be worthy of reliance as same had been made truthfully and voluntary. In the present case also, despite of having 90% burn injuries, the deceased lived for about 9 days and from the case papers, we do not find anything which can throw light on the mental impairment of the deceased. Thus, having regard to the peculiar facts of the case and nature of statements as well as supporting medical evidence, we satisfied that, at relevant time, the deceased was conscious and fit state of mind to give statements. It is relevant to note that, both the authorities who have recorded the statements, deposed that, deceased at relevant time, was conscious and mentally fit to give statement. In this aspect, the objection being raised by the defense that the duty doctor Mr. Dhrvu who made the endorsement, was not examined by the prosecution and the doctor who testified, has no personal knowledge. We are not impressed with the objection as when the persons who recorded the

statements, satisfied themselves that deceased was in a fit state of mind, then, non-examination of the doctor who made the endorsement of fitness, would not render the dying declarations unacceptable. We may profitably refer the judgment of **Laxman vs. State of Maharashtra (AIR 2000 SC 2973)**, wherein the Constitutional Bench has laid down the law that, the absence of certification of the doctor as to fitness of the mind of declarant would not render the dying declaration unacceptable because the essential requirement is that, the person who records, it must be satisfied that, deceased was in a fit state of mind and on the aspect of certificate, the Supreme Court further laid down that, the certification of a doctor is only a rule of caution and voluntary and truthful nature of dying declaration can be established otherwise.

In light of the aforesaid law and in the facts of the present case, the doctor Mr. Dhruv made an endorsement about the fitness of the declarant, but somehow, the doctor could not be available for deposition and the doctor who was familiar with the signature and other things, stepped into witness box. Thus, in our opinion, after careful examination of both the dying declarations, we satisfied that, the deceased independently in a fit state of mind, narrated the facts of incident and how he was burnt alive. We are cautious of the fact that the father was at the hospital when the complaint came to be recorded, but, it is evident that, without influence of anyone, both the declarations being recorded by the respective authorities and therefore, we have no doubt in our mind about the truthfulness and reliability of the statements made by the deceased and having regard to the

circumstances, both the statements does inspire confidence in our mind to the effect that there was no motive for the deceased to disclose the false facts against the accused-appellants. The third objection on the reliability of the declarations being made is that, both the declarations are inconsistent on material aspects. We do not find any material inconsistencies in the statements and only distinguishing feature we could find is the specific name and role of the accused in committing the offence. In the declaration recorded by the Magistrate, no specific role being assigned to the accused, whereas, in the second dying declaration in the form of FIR, everything being disclosed in clear terms by the deceased. So, in our opinion, the plea with regard to inconsistencies on the material aspects has no any merits.

22. For the reasons aforementioned, it is proved and established by the prosecution beyond reasonable doubt that the death of the deceased was homicidal in nature. The trial court found guilty both the accused holding that the accused with their common intention, by pouring kerosene upon the deceased, set him on fire.

23. We have carefully perused both the dying declarations and available evidence on record. We are of the opinion that, so far accused Naresh Kori is concerned, in both the dying declarations, he has not been assigned any specific role. It is relevant to note that, the allegation of pouring kerosene and setting the deceased on fire, being alleged against Pradeep Kori – accused no.2. In such circumstances, in absence of any evidence with regard to sharing common intention by the accused to kill the deceased, the conviction of Naresh Kori for killing

the deceased is not sustainable in the eye of law and thus, so far as appellant – Naresh Kori is concerned, at the most, as discussed earlier, he can be held liable under Section 323 of Indian Penal Code for causing injury to PW.7 and nothing more and therefore, the prosecution miserably failed to prove charge of murder with the aid of Section 34 against the appellant-accused Naresh Kori by adducing cogent and acceptable evidence.

24. The result of the discussion is that, the accused Pradeep Kori who had poured kerosene and set the deceased on fire by igniting matchstick, killed the deceased and charge against him for causing burn injuries which led to the death of the deceased is proved.

25. The aforesaid findings bring us to the next question for consideration which is whether the learned trial court was justified in convicting the appellant Pradeep for the offence under Section 302 of the Indian Penal Code or the same is liable to be converted to the offence under Section 304 Part I or II of the Indian Penal Code.

26. In order to decide the issue, we have carefully examined the contents of dying declarations. There was specific statement made by the deceased that, at the first instance, Pradeep threw a bottle filled with petrol and thereafter, in the second episode, he brought the kerosene cane and after pouring it upon him, he was set on fire. The burnt matchstick was found at the place. The percentage of the burn injuries were that of 90% and more and as per the opinion of the doctor, the second and third degree burn injuries were sufficient in ordinary course to cause the death. The accused Pradeep after the

incident, fled away from the spot. The FSL Report proves the presence of the kerosene on the clothes of the deceased and other items seized from the place of incident. The I.O. in his deposition, on the aspect of non-recover of kerosene cane/bottle, clarified that, he could not recover it because the accused after the incident, disposed of it. We may refer and rely the case of **Santosh vs. State of Maharashtra (2015 7 SCC 641)**, wherein the Supreme Court did not consider the conduct of the accused who had tried to extinguish the fire mainly on the ground that, the act of setting the person ablaze was so imminently dangerous which in all probability will cause death. The relevant paragraphs no.9 to 18 reads thus:

> *"9. Insofar as the first contention that the appellant is not responsible for the death of deceased Saraswatibai, the defence made an attempt to contend that the fire was accidental and that the appellant tried to extinguish the fire in order to save her and in that process, he also suffered burn injuries. The prosecution has adduced cogent evidence to prove that the appellant has caused the death of deceased Saraswatibai. The accused suspected the deceased of infidelity and picking up a fight over it, he kicked her and inflicted fist-blows and further set her on fire by pouring kerosene over her person. PW 6, doctor certified that the deceased was in a fit mental condition to make the statement and PW 7, the Executive Magistrate recorded the dying declaration Ext. 1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the appellant poured kerosene over her person and set her on fire. That accused poured kerosene on the deceased and set her on fire is corroborated by the oral testimony of PW 3, Sindhu Sunil Ingole (sister-in-law) of the deceased. PW 1 Raju Janrao Gavai, neighbour of the deceased who accompanied the deceased to the*

hospital to whom the deceased is said to have made a statement about the overt act of the accused, had only stated that the deceased told him that the accused beat her and also kicked her. PW 1 had not supported the statement of the deceased in the dying declaration that the accused poured kerosene on her and set her on fire. However, the prosecution has established the guilt of the accused by Ext. 1 dying declaration and the oral evidence of the mother (PW 2) and the sister-in-law (PW 3) and the same cannot be doubted.

10. The learned counsel for the appellant contended that there was no premeditation and the appellant had poured kerosene from the lamp nearby and thereafter the appellant attempted to extinguish the fire by pouring water on her and himself getting burn injuries in the process. It was submitted that the conduct of the appellant in trying to extinguish the fire immediately after the incident would clearly show that there was no intention on the part of the appellant to commit the murder. In support of his contention, he placed reliance on the judgment of this Court in Kalu Ram v. State of Rajasthan.

11. The question falling for consideration is whether the act of the accused pouring water would mitigate the offence of murder. Where the intention to kill is present, the act amounts to murder, where such an intention is absent, the act amounts to culpable homicide not amounting to murder. To determine whether the offender had the intention or not, each case must be decided on its facts and circumstances. From the facts and circumstances of the instant case, it is evident that : (i) there was a homicide, namely, the death of Saraswatibai; (ii) the deceased was set ablaze by the appellant and this act was not accidental or unintentional; and (iii) the post-morterm certificate revealed that the deceased died due to shock and septicaemia caused by 60% burn injuries. When the

accused poured kerosene on the deceased from the kerosene lamp and also threw the lighted matchstick on the deceased to set her on fire, he must have intended to cause the death of the deceased. As seen from the evidence of PW 5, panch witness, in the house of the appellant, kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene was poured from the kerosene lamp or from the can is of no consequence. When there is clear evidence as to the act of the accused to set the deceased on fire, absence of premeditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

12. After attending to nature's call, the deceased returned to the house a little late. The accused questioned her as to why she was coming late and he also suspected her fidelity. There was no provocation for the accused to pour kerosene and set her on fire. The act of pouring kerosene, though on the spur of the moment, the same was followed by lighting a matchstick and throwing it on the deceased and thereby setting her ablaze. Both the acts are intimately connected with each other and resulted in causing the death of the deceased and the act of the accused is punishable for murder.

13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death.

14. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in Kalu Ram case [(2000) 10 SCC 324 : 2000 SCC (Cri) 86], it was contended that such conduct of the accused would bring down the offence from murder to culpable homicide not amounting to murder. In Kalu Ram case [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] , the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do as demanded. Infuriated by the fact that his wife had failed to concede to his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realised that the fire was flaring up, he threw water on her person in a desperate bid to save her. In such facts and circumstances, this Court held that the accused would not have intended to inflict the injuries which she sustained on account of the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

15. The decision in Kalu Ram case [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated on a par with an act committed by a person in a

highly inebriated condition where his faculty of reason becomes blurred.

16. Within three months of her marriage, the deceased died of burn injuries. In bride burning cases, whenever the guilt of the accused is brought home beyond reasonable doubt, it is the duty of the court to deal with it sternly and award the maximum penalty prescribed by the law in order that it may operate as a deterrence to other persons from committing such offence.

17. This Court on various occasions has stressed the need for vigilance in cases where a woman dies of burn injuries within a short span of her marriage and that stern view needs to be adopted in all such cases. In Satya Narayan Tiwari v. State of U.P. [(2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393] , this Court in paras 3 and 9 has held as under : (SCC pp. 692 & 693)

> *"3. Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner- What has our society become-this is illustrated by this case.*
>
> ***
>
> *9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and*

> *after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialization of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand."*

> *18. Upon analysis of the evidence adduced by the prosecution, the courts below recorded concurrent findings that the accused caused the death of deceased Saraswatibai and convicted the appellant. It is well settled that concurrent findings of fact cannot be interfered with unless the findings are perverse and unsupportable from the evidence on record. This view has been reiterated in Dhananjay Shanker Shetty v. State of Maharashtra [(2002) 6 SCC 596 : 2002 SCC (Cri) 1444] . In the totality of the facts and circumstances, in our view, the concurrent findings of facts recorded by the courts below are based on evidence and we see no infirmity in the impugned judgment warranting interference". Therefore, after pouring kerosene on the deceased and thereafter setting her ablaze, thereafter merely because the accused might have tried to extinguish the fire will not take the case out of the clutches of clause fourthly of Section 300 of the IPC. The act of the accused pouring kerosene on the deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court has rightly convicted the accused for the offence under Section 302 IPC."*

27. In the case on hand, as discussed, the appellant-accused Pradeep Kori after pouring kerosene and set the deceased on fire and in absence of any provocation on the part of the deceased, the act of the accused

shows his pre-meditated mind to kill the deceased and thus, the act of the accused would not fall under exceptions to Section 300 of the Indian Penal Code and his act would fall under clause thirdly and fourthly of Section 300 as the act by which the death was caused, was done with the intention of causing death and causing such bodily injury as is likely to cause death which was sufficient in ordinary course of nature to cause death.

28. In view of the aforesaid discussions and reasons thereof, the accused Pradeep Kori is the author of the crime and the prosecution succeeds in proving the charge of murder as defined under Section 300 of the Indian Penal Code against the appellant-accused Pradeep Kori by adducing acceptable, reliable and trustworthy evidence. However, the charge of causing injury under Section 323 is not proved against the accused Pradeep Kori.

Whether in the facts of the present case, the accused Pradeep Kori is liable for death penalty ?

29. The Trial Court vide its judgment dated 01.04.2023 convicted the appellants accused for the murder of deceased Pankaj punishable under Section 302 of Indian Penal Code and on the same day i.e. 01.04.2023, passed the sentence of capital punishment. Consequently, the Trial Court made a reference to the High Court under Section 366 of Cr.P.C. for the confirmation of the death sentence.

30. Mr.Parmar, learned counsel appearing for the appellants accused, has submitted that the persons convicted of murder, the sentence of life

imprisonment is a rule and death sentence is an exception; on the question of sentence, learned Trial Court hold that life imprisonment would be inadequate sentence for the convicts and aggravating circumstances are outweighing the mitigating circumstances and offence being gruesome, the case falls within the category of rarest of rare cases and accordingly, imposed death sentence. That the Trial Court on the same day, when the conviction of the appellants accused pronounced, without giving proper opportunity to the accused as well as the State, in a casual manner, arbitrarily awarded death sentence which is contrary to the settled principles of criminal jurisprudence and law propounded by the Supreme Court in its various judgments; that the Trial Court has not assigned any "special reasons" as the accused's right of pre-sentence hearing and Court's duty to assign special reasons have not been observed and followed by the trial court and on this count, the order of sentence is not sustainable in law.

31. On the other hand, learned State Counsel has supported the order of death sentence passed by the Trial Court, contending that the discretion has been properly exercised after considering the peculiar facts and circumstances of the present case and thus, no ground exists for interference with the order of sentence.

32. In the case on hand, as per the prosecution case, the appellants accused and the deceased being neighbours, the quarrel took place between them because, the appellants accused extracted the petrol from the bike of the deceased and on this issue, the deceased slapped the accused Naresh and thereafter, in the presence of the family members

of the deceased, fight was occurred and after intervention of witnesses, the matter was resolved and thereafter, at about 09:30 p.m., the deceased came out from his house and went to the place where the appellants-accused were standing near the grocery shop of the society and again heated exchange of words being taken place between the parties and in these background facts, the accused appellant Pankaj Kori brought a cane of kerosene from his house and poured it upon the deceased Pankaj and set him on fire. We are of the view that on a petty issue, the quarrel took ugly mode which resulted into death of Pankaj. Thus, it cannot be said that the act was done in a pre-planned way and in a diabolically manner or the murder has been committed with extreme brutality or that the same involves exceptional depravity. Therefore, merely because a crime is heinous per-se may not be sufficient reason for the imposition of death penalty without reference to the factors and attending circumstances. The Trial Court after pronouncing the judgment of conviction, should have adjourned the case for further hearing on the sentence of capital punishment because under Section 235(2) of Cr.P.C., it is mandatory for the Court to hear the accused and provide sufficient opportunity to the accused for furnishing the necessary information on mitigating circumstances before passing the order of capital punishment. In the present case, the Trial Court has not assigned any special reasons for awarding the sentence of death, as the duty casts on the Trial Court under Section 354(3) Cr.P.C. to state a special reason for awarding the death sentence. It is thus clear that the learned Trial Court after convicting the appellants has not given adequate opportunity to them to produce

the mitigating circumstances in their favour neither it tried to collect the same, nor discussed what the mitigating circumstances are available in favour of the appellants, but has merely stated that the aggravating circumstances were outweighing the mitigating circumstances.

In the case of **Allaudin Mian Vs. State of Bihar (1989 (3) SCC 5)**, the Supreme Court held that since the choice is between capital punishment and life imprisonment, the legislature has provided a guideline in the form of sub-section (3) of Section 354. It is held that as a general rule, the Trial Court should after recording the conviction adjourned the matter to a future date and call upon the prosecution as well as the defence to place the relevant materials bearing on the question of sentence before it and thereafter, pronounce the sentence to be imposed upon the offender. The Presiding Officer must show high degree of concern for the statutory right of the accused and should not treat it as a formality to be crossed before making the choice of sentence. If the choice is made without giving an accused an effective opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc. before the Court, the Court's decision on the sentence would be vulnerable. The sentencing Court must dealt with the question seriously and endevour to see that all the facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. The learned Trial Court did not have called upon and/or direct the superintendent of prison or any competent

authority to collect detailed information with the reports of past life, psychological condition and conduct of the appellants-accused and such other relevant materials. In this context, we may profitably refer the case of **Manoj Vs. State of Madhya Pradesh (2023 (2) SCC 353)**, wherein the Supreme Court gave emphasis on practical guidelines to collect mitigating circumstances, which are as follows:

> *"248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.*
>
> *249. To do this, the trial Court must elicit information from the accused and the State, both. The State must for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4), an onus placed squarely on the State conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate Courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.*
>
> *250. Next, the State, must in a time-bound manner, collect, additional information pertaining to the accused. An illustrative,*

but not exhaustive list is as follows:

(a) Age;

(b) Early family background (siblings, protection of parents, any history of violence or neglect);

(c) Present family background (surviving family members, whether married, has children, etc.);

(d) Type and level of education;

(e) Socio-economic background (including conditions of poverty or deprivation, if any);

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any);

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial Court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal,towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial Court's conviction, or High Court's confirmation, as the case may be, a fresh report (rather than the one used by the previous court) from the jail authorities is

recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.

252. It is pertinent to point out that this Court in Anil -Vs.- State of Maharashtra : (2014) 4 Supreme Court Cases 69 has in fact directed criminal courts to call for additional material:

(SCC p. 86, para 33)

"33.…Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the Court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like section 302 I.P.C., after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

33. Thus, the law requires the court to record special reasons for awarding such sentence. In the case of *Ramnaresh & ors. Vs. State of Chhatisgarh (2012 AIR SC 1917),* after referring the earlier judgments on the death sentence including *Bachchansingh vs. State of Punjab (1980 2 SC 684) and Machhisingh vs. State of Punjab (1983 3 SCC 470),* held that, before imposing death sentence, the trial court has to consider matters like nature of offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attendant circumstances. The Supreme Court further clarified that, the factors referred hereinabove cannot be similar or identical in any two given cases and therefore, it has been laid down that, it is imperative for the court to examine each case on its own facts, in light of the enunciated principles and then, arrive at final conclusion whether the case in hand is one of the rarest of rare cases and imposition of death penalty alone shall serve the ends of justice. In order to examine the aforesaid aspect in some greater depth and with objectivity, the Supreme Court reiterated the various guiding factors by referring the various judgments. Paras 60 to 71 which reads thus:

> *“60. In State of Maharashtra V/s. Goraksha Ambaji Adsul [(2011) 7 SCC 437], wherein this Court discussed the law in some detail and enunciated the principles as follows :*
>
> *"30. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the*

pronouncement of the Constitution Bench judgment of this Court in Bachan Singh V/s. State of Punjab. Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in the case and the impact of awarding punishment. These are the nuances which need to be examined by the court with discernment and in depth.

61. In Machhi Singh & Ors. V/s. State of Rajasthan [(1983) 3 SCC 470], this Court stated certain relevant considerations like the manner of commission of murder, motive for commission of murder, anti-social or socially abhorrent nature of the crime, magnitude of crime and the personality of the victim of murder. These considerations further demonstrate that the matter has to be examined with reference to a particular case, for instance, murder of an innocent child who could not have or has not provided even an excuse, much less a provocation for murder. Similarly, murder of a helpless woman who might be relying on a person because of her age or inrmity, if murdered by that person, would be an indicator of breach of relationship or trust as the case may be. It would neither be proper nor probably permissible that the judicial approach of the court in such matters treat one of the stated considerations or factors as determinative. The court should examine all or majority of the relevant considerations to spell comprehensively the special reasons to be recorded in the order, as contemplated under Section 354(3) of the Cr.P.C.

62. In the case of Dhananjoy Chatterjee @ Dhana V/s. State of West Bengal [(1994) 2 SCC 220] while arming the award of death sentence by the High Court, this Court noticed that `in recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern'. The Court

reiterated the principle that it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime, as also the society, has the satisfaction that justice has been done to it.

63. The Court held as follows:-

"15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment betting the crime so that the courts reect public abhorrence of the crime.

The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

64. In this case, the Court was concerned with the case of a security guard who had been transferred at the complaint of a lady living in the ats with regard to teasing of her young girl child. The security guard went up to the at of the lady, committed rape on her daughter and then murdered her brutally. The Court found it to be a t case for imposition of capital punishment.

65. Again, in the case of Surja Ram V/s. State of Rajasthan [(1996) 6 SCC 271], this Court armed the death sentence awarded by the High Court primarily taking into consideration that there was no provocation and the manner in which the crime was committed was brutal. Noticing that the Court has to award a punishment which is just and fair by administering justice tempered with such mercy not only as the criminal may justly deserve but also to the rights of the victims of the crime to

have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

66. The Court further held as under: (Suraj Ram case (1996) 6 SCC 271)

"18. After giving our anxious consideration to the facts and circumstances of the case, it appears to us that for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner. Such act of balancing is indeed a dicult task. It has been very aptly indicated in Dennis Councle McGautha V/s. State of California that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the innite variety of circumstances that may affect the gravity of the crime of murder. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime of murder, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished."

67. This Court in Prajeet Kumar Singh V/s. State of Bihar [(2008) 4 SCC 434], B.A. Umesh V/s. Registrar General, High Court of Karnataka [(2011) 3 SCC 85], State of Rajasthan V/s. Kashi Ram [(2006) 12 SCC 254] and Atbir V/s. Government of NCT of Delhi [(2010) 9 SCC 1] had conrmed the death sentence awarded by the High Courts for different reasons after applying the principles enunciated in one or more afore-referred judgments.

68. Now, we may notice the cases which were relied upon by the learned counsel appearing for the appellants and wherein this Court

had declined to conrm the imposition of capital punishment treating them not to be the rarest of rare cases.

69. In Ronny @ Ronald James Alwaris Etc. V/s. State of Maharashtra [(1998) 3 SCC 625], the Court while relying upon the judgment of this Court in the case of Allauddin Mian & Ors. V/s. State of Bihar [(1989) 3 SCC 5], held that ...the choice of the death sentence has to be made only in the `rarest of rare' cases and that where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society…."

70. The Court also noticed the above-stated principle that the Court should ordinarily impose a lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only. The Court, while considering the cumulative effect of all the factors such as the offences not committed under the inuence of extreme mental or emotional disturbance and the fact that the accused were young and the possibility of their reformation and rehabilitation could not be ruled out, converted death sentence into life imprisonment.

71. Similarly, in the case of Bantu @ Naresh Giri V/s. State of M.P. [(2001) 9 SCC 615] while dealing with the case of rape and murder of a six year old girl, this Court found that the case was not one of the `rarest of rare' cases. The Court noticed that, accused was less than 22 years at the time of commission of the offence, there were no injuries on the body of the deceased and the death probably occurred as a result of gagging of the nostril by the accused. Thus, the Court while noticing that the crime was heinous, commuted the sentence of death to one of life imprisonment."

34. Guided by the above principles and applying the same to the facts of the present case, the trial court failed to conduct an inquiry to

ascertain the mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation of the appellants accused and also did not prepare a balance sheet of aggravating and mitigating circumstances and there is no definite finding that the option of imposing of any penalty other than death penalty is unquestionably foreclosed and would be insufficient in the facts and circumstances of the case and also did not observe that, the convict is beyond reformation and would be a menace to the society if allowed to return after specific period of time. Admittedly, there is no criminal antecedent of the appellant – Pradeep Kori or he is habitual offender and having considered the peculiar circumstances of the case, we do not find that the murder has been committed with extreme brutality and there is no data placed before this Court that the accused would commit criminal acts of violence in the future and having regard to the age of the accused, there is all possibility that, he can be reformed and rehabilitated.

35. In view of the foregoing discussions and having regard to the facts and circumstances of the present case and striking a balance between the aggravating and mitigating circumstances of the case, we are of the considered opinion that the death penalty would be disproportionate, unwarranted and the imprisonment for life would be sufficient punishment instead of death penalty and thus, we are not confirming the death sentence as proposed by the learned trial court. Accordingly, we commute the death sentence imposed upon the accused Pradeep Kori – A2 into one of life imprisonment.

36. For the reasons aforementioned and considering the circumstances and established principles of law laid down by the Supreme Court, the sentence of imprisonment of life qua accused A2 – Pradeep Kori would met the ends of justice and the death sentence is converted into life imprisonment and accordingly, we are commuting the death sentence to that of life imprisonment. The accused A2 – Pradeep Kori is sentenced to life imprisonment under Section 302 Indian Penal Code and also directed to pay the fine amount of Rs.2,000/- and in default thereof, he has to further undergo simple imprisonment for one month. The period whatever undergone has been given set off. The accused Pradeep Kori is acquitted of the charge of causing voluntary injury punishable under Section 323 Indian Penal Code.

37. The appellant accused A1 – Naresh Kori has been acquitted of the charge punishable under Section 302 read with Section 34 of Indian Penal Code and judgment of conviction and death sentence passed against the accused Naresh Kori is hereby set aside. He has been convicted under Section 323 for causing injury to PW.7 and the sentence whatever awarded by the trial court is maintained and upheld and he is also extended the benefit of set off under Section 428 Cr.P.C. for the sentence whatever he has undergone. Since date of his arrest, he is in jail. The jail authority shall set him free unless his custody is required in any other offence.

38. The conviction appeal filed by the accused A1 – Naresh Kori is allowed in part and conviction appeal filed by A2 – Pradeep Kori is allowed in part so far as sentence is concerned. The confirmation case

stands dismissed. Accordingly, the appeal and confirmation case are disposed of. R & P be sent back to the concerned trial court henceforth.

Sd/-
(ILESH J. VORA,J)

Sd/-
(P. M. RAVAL, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 14/10/2025 18:01:53