

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1125 of 1995****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE S.H.VORA****Sd/-****and****HONOURABLE MR. JUSTICE SANDEEP N. BHATT****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

STATE OF GUJARAT

Versus

RAVAL DEEPAKKUMAR SHANKERCHAND & 2 other(s)

Appearance:

MS CHETNA M. SHAH, APP for the Appellant - State

ABATED for the Opponent(s)/Respondent(s) No. 2

MR. ARCHIT P JANI(7304) for the Opponent(s)/Respondent(s) No. 1,3

CORAM: HONOURABLE MR. JUSTICE S.H.VORA**and****HONOURABLE MR. JUSTICE SANDEEP N. BHATT****Date : 21/03/2022****CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)**

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 08.09.1995 passed by the learned Assistant

Sessions Judge, Mehsana in Sessions Case No.134 of 1993 for the offences under Sections 498(A) and 306 of the Indian Penal Code, the appellant - State of Gujarat has preferred this appeal as provided under Section 378 of the Code of Criminal Procedure, 1973 ("**the Code**" for short) inter alia challenging the judgment and order of acquittal in favour of the respondents - accused. The present appeal is abated qua respondent No.2 vide separate order dated 14.03.2022 passed by this Court.

2. The case of the prosecution is that, the deceased - Ranjanben got married with accused No.1 - Dipakkumar Sakarchand Raval before four years from the incident. Due to the demand of dowry, the deceased has committed suicide by jumping in the Well. Thereafter, the brother of the deceased - Bhalchandra Hiralal Rawal has given a complaint with regard to the incident before the Vijapur Police Station, District : Mehsana, which was registered for the offences under Sections 498(A) and 306 of the Indian Penal Code.

3. In pursuance of the complaint lodged by the complainant, investigating agency recorded statements of the witnesses, collected relevant evidence in form of medical evidence and drawn various Panchnamas and other relevant evidence for the purpose of proving the offence. After having found material against the respondent accused, charge-sheet came to be filed in the learned competent Court and in turn, committed the case to the Sessions Court, Vijapur as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court concerned, the learned Sessions Judge framed charge at Exh.9 against the respondents accused for the aforesaid offence. The respondents accused pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined some witnesses and also produced various documentary evidence before the learned trial Court, described in the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain his explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him. After hearing both the sides and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the respondent accused of the offences, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.

7. We have heard learned APP Ms. Shah appearing for the applicant - State and Mr. Jani for respondents No.1 and 3 and have minutely examined the documentary evidence provided to us by learned APP during the course of hearing. Pending appeal, respondent No.2 expired and therefore appeal qua him came to be abated.

8.1 In the deposition of PW-1 - Bhalchandra Hiralal Rawal at Exh.15, who happened to be the brother of the deceased and who is a complainant, he has stated that, deceased Ranjanben has not stated anything to him about harassment and/or dowry by the husband and by the in-laws. He has only stated in his deposition that, deceased Ranjanben has informed his wife about demand of scooter by her husband when they met during Navaratri festival and nothing further is told by deceased Ranjanben to his wife about any

harassment.

8.2 Moreover, PW-2 - Pushpaben Bhalchandra Rawal (Exh.18) in her deposition has admitted that deceased Ranjanben was residing separately from her father-in-law and mother-in-law since last six months and was used to write letters at Mumbai where she has always shown her happy life and never made any complaint in the letters written to her. She has further admitted that she had not informed to any other person about the talk with Ranjanben made during Navratri.

8.3 Looking to the evidence of PW-3 - Sarojben Mukeshkumar Rawal at Exh.22, who happened to be the elder sister of the deceased, wherein she has stated in her corss-examination that the deceased has never informed her regarding the dowry and/or any harassment by the in-laws, though she had written several letters to her.

8.4 Even the investigating officer - PW-4 - Babubhai Somabhai Parmar (Exh.24), had admitted in his cross-examination that Sarojben - PW-3, who happened to be the elder sister of the deceased, has not stated in her statement about the harassment or physical torture given to the deceased Ranjanben by the accused. Thus, the prosecution could not establish the case under Section 498(A) and 306 of the Indian Penal Code by adducing convincing evidence and the trial Court has rightly found that presumption under Section 113 of the Indian Evidence Act cannot be applied in the present case where the prosecution has failed to prove the aspect of harassment caused by the accused to the deceased through the evidence of PW Nos.1 to 3, who are the nearest relatives of the deceased. Except this, no any other evidence was put to our notice

for interfering with the impugned judgment.

9. It is pertinent to note that the prosecution is required to prove the intention or knowledge of the accused persons, however, it is necessary that the prosecution is required to firstly prove under Section 306 of the Indian Penal Code that as suicide has been committed; secondly the prosecution must also prove that the person who is said to have abetted in the commission of suicide, has played active role in the same and Section 498(A) of the Indian Penal Code cannot be attracted, in the cases when the vague allegations are made but no specific instance of hostile attitude or persistent demands of dowry by the accused pointed out by the witnesses. We have minutely examined oral evidence and all the prosecution witnesses, we found that nothing is disclosed with regard to the instigation or any persistent demand to constitute that there is anything on the part of the respondents - accused to commit act or abetment in committing suicide. In the present case the prosecution has failed to discharge its burden to prove its case beyond reasonable doubt and the Trial Court has rightly acquitted the accused persons by giving clear acquittal as the case is not proved beyond reasonable doubt under Section 306 or 498(A) of the Indian Penal Code.

10. It is beneficial to refer to the judgment of Hon'ble Supreme Court of India in the case of **Arnab Manoranjan Goswami versus State of Maharashtra and others** reported in **(2021) 2 SCC 427**, where the Hon'ble Apex Court has observed in Paras : 49, 50, 51, 55, 57 and 58 as under :

"49. Before we evaluate the contents of the FIR, a reference to Section 306 of the IPC is necessary. Section 306 stipulates

that if a person commits suicide —whoever abets the commission of such suicide|| shall be punished with imprisonment extending up to 10 years¹⁷ . Section 107 is comprised within Chapter V of the IPC, which is titled —Of Abetment. Section 107 provides:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to

306. Abetment of suicide.— If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. PART I 35 cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and

thereby facilitates the commission thereof, is said to aid the doing of that act.”

50. *The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in State of West Bengal vs Orilal Jaiswal¹⁸ , Randhir Singh vs State of Punjab¹⁹ , Kishori Lal vs State of MP²⁰ (—Kishori Lal) and Kishangiri Mangalgiri Goswami vs State of Gujarat²¹ . In Amalendu Pal vs State of West Bengal²² , Justice Mukundakam Sharma, speaking for a two judge Bench of this Court and having adverted to the earlier decisions, observed :*

“12...It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of

Section 306 IPC is not sustainable.”

51. *The Court noted that before a person may be said to have abetted the commission of suicide, they —must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Instigation, as this Court held in Kishori Lal (supra), —literally means to provoke, incite, urge on or bring about by persuasion to do anything. In S S Chheena vs Vijay Kumar Mahajan 23, a two judge Bench of this Court, speaking through Justice Dalveer Bhandari, observed:*

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

52. *Madan Mohan Singh vs State of Gujarat*²⁴ was specifically a case which arose in the context of a petition under Section 482 of the CrPC where the High Court had dismissed the petition for quashing an FIR registered for

offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with 23 (2010) 12 SCC 190 24 (2010) 8 SCC 628 PART I 37 the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of which indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had other complaints including the deduction of 15 days' wages from his salary. The suicide note named the accused-appellant. In the decision of a two judge Bench of this Court, delivered by Justice V S Sirpurkar, the test laid down in Bhajan Lal (supra) was applied and the Court held:

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all

that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this."

53. *Dealing with the provisions of Section 306 of the IPC and the meaning of abetment within the meaning of Section 107, the Court observed: PART I 38.*

"12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide

note.”

The Court noted that the suicide note expressed a state of anguish of the deceased and “cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide.” Reversing the judgment of the High Court, the petition under Section 482 was allowed and the FIR was quashed.”

55. *More recently in M Arjunan vs State (represented by its Inspector of Police)²⁵ , a two judge Bench of this Court, speaking through Justice R. 25 (2019) 3 SCC 315 PART I 39 Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations:*

“7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

57. *Similarly, in Rajesh vs State of Haryana²⁷, a two judge Bench of this Court, speaking through Justice L.*

Nageswara Rao, held as follows:

“9.Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must 27 Criminal Appeal No. 93 of 2019 decided on 18 January 2019 PART I 41 be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

58. *In a recent decision of this Court in Gurcharan Singh vs State of Punjab²⁸ , a three judge Bench of this Court, speaking through Justice Hrishikesh Roy, held thus:*

“15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to

establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.”

11. It is also beneficial to refer to the decision of Hon'ble Apex Court in the case of **Nimay Sah versus State of Jharkhan** reported in **AIR 2021 SC 159**, where the Hon'ble Apex Court has observed in Paras : 14 and 16 as under :

“14. It ought to be noted that apart from these vague allegations, no specific instance of hostile attitude or persistent demands of dowry have been pointed out by any of these witnesses. Further, Shyam Sunder Sah (P.W.7), brother of the deceased, has admitted in his cross-examination that the deceased used to write him letters from her matrimonial place, and that, none of the letters mention any harassment on account of demand of dowry.

16. Thus, on consideration of the oral testimonies of the 6 witnesses, the ingredients of Section 498A IPC have not been proved against the appellant accused by the prosecution at the standard of beyond reasonable doubt. In such circumstances, there is nothing on record to convict the appellant accused for the charge under Section 498-A IPC. ”

12. In view of above and on our own analysis and re-appreciation of the evidence, we do not find any infirmity or compelling reasons to interfere with the order of acquittal recorded by the trial Court. We have also perused the judgment and findings given by the trial Court and find that the same are in accordance with law.

13. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

14. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

15. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011)

11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

16. In the very recent judgment reported in 2021 (15) SCALE 184 in the case of Mohan @ Srinivas @ Seena @ Tailor Seena V/s. State of Karnataka, the hon'ble Apex Court has observed the scope of section 378 of the Code in Para : 20 to 22 as under :-

"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial Court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial Court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role

required to play, while dealing with a case of an acquittal.

21. *Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial Court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial Court decides a case on its own merits despite its sensitivity.*

22. *At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark."*

17. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal. Under the circumstances, the learned trial Judge has rightly acquitted the respondents accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/finding of the learned trial Judge leading to the acquittal.

18. In view of the above and for the reasons stated above, present Criminal Appeal No. 1125 of 1995 deserves to be dismissed and is accordingly dismissed.

Sd/-
(S.H.VORA, J)

Sd/-
(SANDEEP N. BHATT,J)

M.H. DAVE

