



Received on :04.08.2018
Registered on :04.08.2018
Decided on :05.01.2022
D / M / Y
Duration :01 :05 : 03

**IN THE COURT OF 8TH ADDITIONAL DISTRICT & SESSIONS
JUDGE AHMEDABAD(RURAL) AT MIRZAPUR, AHMEDABAD**

SESSIONS CASE NO.152 of 2018

Exh.

The State of Gujarat

VERSUS

Deepakbhai Kantibhai Bariya

R/o 28/876 Krishnadham Audana Makan,
V-2, Vejalpur, Ahmedabad.

=====
Appearances:

Learned Public Prosecutor Mr. A.M. Gulabani for the State.

Ld. Advocate Mr. P.P. Zapadiya for Accused.
=====

:-J U D G M E N T:-

1. In the present matter wheel of Criminal Jurisprudence was put into motion by registration of FIR at Anandnagar Police Station, Ahmedabad on 22.04.2013, vide First Crime Registration No.I-54/2013, for the offences punishable under Section 498-A , 306 of Indian Penal Code,1860 (hereinafter

referred as 'IPC') and Section 3 , 7 of the Dowry Prohibition Act.

2. The facts of the prosecution case in nutshell are that on 21.04.2013, at about 3:15pm, deceased-Rekhaben who was the wife of the present accused, committed suicide by setting herself on fire in consequent to harassment and cruelty committed by the accused-Deepak Kantibhai Bariya by demanding money and other things etc. to be brought by the deceased-Rekha from her parental home. A First Information Report to that effect was lodged by the complainant/brother of deceased against the accused Deepakbhai on 22.04.2013 at Anandnagar Police Station for the offences punishable U/ss 498-A , 306 of IPC and Sections 3 , 7 of Dowry Prohibition Act. Accused was arrested by IO on 24.04.2013 and subsequently he was enlarged on regular bail by the Hon'ble Sessions Court vide order dated 04.05.2013.
3. After the registration of the F.I.R. investigation was carried-out by drawing various Panchnamas, recording the statements of relevant witnesses and lastly, on having sufficient prima facie evidence against the accused, the charge-sheet dated 05.08.2013 was filed against the accused in the court of concerned Ld. Judicial Magistrate vide Criminal Case No.6376/2013. On the basis of charge-sheet and the documents submitted with it, the learned Judicial Magistrate, Dhandhuka, Ahmedabad(Rural) took cognizance of offences

punishable under Section 498-A, 306 of IPC and Section 3 & 7 of Dowry Prohibition Act and after complying with the provisions of section 207 of Code of Criminal Procedure, 1973 (herein after referred as 'Cr.P.C.'), the matter was committed to Sessions Court for its trial vide order dated 26.06.2018 as per the provisions contained in Section 209 of Cr.P.C and was registered as Sessions Case No.152 of 2018.

4. After the committal of the case, summons were issued to the accused person, who appeared before the Sessions Court and the charges for offences punishable under Section U/s 498-A, 306 of IPC and Section 3, 7 of Dowry Prohibition Act came to be framed vide Exh.4 by Ld. Predecessor and plea was recorded vide Exh.5. In the plea, accused person pleaded not guilty and claimed to be tried.
5. The trial commenced with prosecution evidence and the prosecution has laid following oral as well as documentary evidence to substantiate its case : -

(A) Oral evidence:-

Sr. No.	Name of the Witness	Nature of Witness	Exh. No.
1.	Dilipbhai Ashokbhai Vaghela	Complainant	7
2.	Dr. Bhavin Shyamlal Shah	Doctor	9
3.	Vikrambhai Radabhai Mahajan	Panch Witness	13
4.	Hansaben Jayrambhai Bariya	Panch witness	15
5.	Kamleshbhai Chamanlal Vadhvana	Witness	17

6.	Bharatbhai Ladhabhai Vaghela	Witness	18
7.	Madhuben Ashokbhai Vaghela	Witness	19
8.	Jayeshbhai Ashokbhai Vaghela	Witness	20
9.	Kalpanaben Dilipbhai Vaghela	Witness	21
10.	Kishorsinh Ganpatsinh	Head constable	22
11.	Prakashbhai Dhirajlal Pandya	FSL Officer	28
12.	Chhaganbhai Nathubhai Parmar	IO	30

(B) Documentary evidence:-

Sr. No.	Documents	Exh. No.
1.	Vardhi	35
2.	Station dairy entry(Janwa Jog)	36
3.	Original complaint	8
4.	Panchnama of the place of incident	14
5.	Permission letter for inquest panchnama	23
6.	Inquest panchnama	16
7.	Inquest form/report sent to police	24
8.	Letter/Muddamal sent to FSL	26
9.	Postmortem certificate	27
10.	Postmortem report	10
11.	Letter/Form sent to FSL	31
12.	FSL report	34

6. After completion of the prosecution evidence, the accused was called upon for recording of Further Statement as per provisions contained under Section 313 of Cr.P.C. and all the incriminating evidence were put to accused person. While reply to same, the accused person stated that her wife got burn injuries accidentally while she was cooking in kitchen and he has never demanded any money etc. from his wife and has never harassed his wife. It is also stated by him that except identifying the dead body he has no knowledge about the

whole incident. It is further stated that he loved his wife very much and no differences of any kind ever occurred between them during past 14 years of their married life. It is further stated that he is doing job of driving and has been maintaining his wife and two children very peacefully and happily with his earnings. For other few questions he made general denial and stated that it is a false case and he has been falsely implicated in this case. The accused person further denied to give any statement on oath or to file any evidence in his defense.

7. The matter was thereafter posted for arguments under Section 234 of Cr.P.C. The oral arguments of Learned Public Prosecutor Mr. A.M.Gulabani, Ld. defense counsel Mr. P.P. Zapadiya have been heard at length.
8. Ld. A.P.P. for the state has submitted that prosecution has proved its case beyond reasonable doubt through the testimony of the witnesses and documents in support of the same. It is further submitted that through the postmortem report Exh.10, it has come on record that cause of death of the deceased was burn injuries and as per the FSL report Exh.29, the residue of the kerosene/petroleum were found on the corpus of the deceased-Rekhaben. It is further submitted that PW-1-Dilipbhai Ashokbhai Vaghela who is the brother of the deceased has stated that his mother has paid Rs.40,000/- to fulfill the demand of the accused and his deceased sister-Rekhaben had also consumed poisonous chemical on previous

occasion because of harassment done by the accused and his father has made one complaint regarding the same. It is further submitted that PW-7-Madhuben Ashokbhai Vaghela / mother has stated that her husband has made a complaint before the police regarding consuming of poisonous chemical by her daughter-Rekhaben. It is further submitted that PW-9-Kalpanaben Dilipbhai Vaghela/ sister-in-law(bhabhi) of the deceased has stated that on 20.07.2001, deceased Rekhaben consumed poisonous chemical and one complaint for the same was lodged by her father-in-law. It is further submitted that there is sufficient material evidence on record to prove the allegations/offences leveled against accused and considering the entire documentary and oral evidence available on record, the offences are proved beyond reasonable doubt and accused be punished for the maximum punishment provided under the provisions of law in this regard.

9. Ld. advocate Mr. P.P. Zapadiya appeared on behalf of accused and argued the matter. During arguments, Ld. advocate for the accused reiterated the contents of the written submissions filed vide Exh.40 and further submitted that accused has been falsely implicated in the present matter and he has not committed any offence as alleged in the charge-sheet and/or the charges framed against him. It is further submitted that PW-1 has admitted that he is residing at Mumbai since past many years and he reached Ahmedabad next day of receiving

information about the incident. PW-1 has no personal knowledge of the incident and initially matter was registered as accidental death case and was inquired accordingly but subsequently the complainant concocted a false story and lodged false FIR vide C.R. No.54/13 on the next date of incident just to harass the accused.

It is further submitted that accused was having peaceful married life of 14 years with the deceased-Rekhaben and is blessed with two sons aged about 20 years and 18 years respectively and there had been no occasion of any kind of altercations between the accused and his beloved wife Rekhaben.

It is further submitted that PW-5-Kamleshbhai Chamanlal Vadhvana, who is a neighbor is the only person who noticed about the aflame of Rekhaben firstly , has stated in his testimony that at about 3:15 pm he came out of his house hearing the shouting of Rekhaben due to burning and he saw that accused was standing downstairs in the block with his children and then this witness shouted to inform accused to come back his home immediately and when accused-Dipakbhai reached to his home, the door was fastened from inside and accused broke the door latch with force to enter into the house and where accused found that Rekhaben got aflame and accused seized the fire with blanket and called 108 ambulance and took her to hospital so that his beloved wife

Rekhaben could be treated immediately for the burn injuries happened to her.

It is further submitted that no dying declaration has been recorded in the present matter. It is further submitted that even as per Exh.35 Vardhi given by Dr R.K.Chowksi from Sola Civil hospital, it has come on record that there was incident of burning of deceased-Rekhaben through the oil/kerosin of gas-stove and there are no allegations against any person in this regard. It is further submitted that present FIR has been lodged just as an after-thought and incident which occurred accidentally had been given shape of the criminal offence. It is further submitted that accused is having responsibility of his two sons who are still at the verge of their settlement in life.

It is further submitted that there is no record of any kind of complaint at the police station regarding consuming of poisonous chemical by Rekhaben and had that been made, the IO of the concerned matter might have examined deceased-Rekhaben in this regard and/or have recorded statement of witnesses for the same, but as no such incident had ever occurred, therefore, no such kind of evidence is available at the concerned police station.

It is further submitted that accused is totally innocent and even as per the available judicial record including testimony of witness and documentary evidence placed on record by the

prosecution, the charges leveled against the accused are not proved beyond reasonable doubt and accused is entitled to be acquitted with honor from the charges leveled against him. With these submissions, Ld. advocate for the accused prayed for acquitting the accused with honour.

10. Considering case of prosecution, FIR, relevant legal provisions, documents placed on record, testimony of witnesses, written submissions filed on behalf of complainant and hearing Ld. advocates for the parties, following points emerge for final determination of the present matter.

a) Whether prosecution proves beyond reasonable doubt that deceased-Rekhaben committed suicide by setting herself on fire as she was being harassed/tortured by accused **Deepakbhai Kantibhai Bariya** through constantly demanding of money and other things to be brought by Rekhaben from her parental home and thereby the accused person has abetted the deceased-Rekhaben to commit suicide and has committed the offences punishable under Sections 498-A, 306 of IPC and Section 3, 7 of the Dowry Prohibition Act?

b) What order ?

11. After perusal of entire judicial record including testimony of witnesses, FSL Report, Panchnamas ,FIR ,other documents

produced on record by prosecution, hearing Ld. advocate for the parties and considering the relevant legal provisions and judgements of Hon'ble Apex Court and Hon'ble High Courts in this regard; findings of this court on above stated points are as under:-

- a) In Negative.
- b) As per Final Order.

:-:REASONS:-:

12. This is the case of the prosecution that on 21.04.2013, at about 3:15pm, deceased-Rekhaben who was the wife of the accused-Deepak Kantibhai Bariya, committed suicide by setting herself on fire in consequent to harassment and cruelty committed by the accused- by demanding money and other things etc. to be brought by the deceased-Rekhaben from her parental home. Hence, accused has abetted his wife to commit suicide and has committed the offences punishable U/ss 498-A , 306 of IPC and Sections 3 , 7 of Dowry Prohibition Act.
13. Prosecution has examined 12 witnesses in support of its version. Testimony of the witnesses in brief is hereby discussed for appreciating the entire evidence recorded in the present matter.
14. PW-1 Dilipbhai Ashokbhai Vaghela has been examined vide Exh.7 wherein, he has stated that he received phone call from his uncle-Bharatbhai Ladhavbhai on 21.04.2013 that his mother

and brother have left the home in hurry after locking the same and immediately PW-1 called his mother-Madhuben and asked as to what has happened , to which she replied that Rekhaben got ablaze and they all are going to Ahmedabad. Subsequently, he called to his brother-Jayeshbhai who told him that the sister has expired hence, he came to Ahmedabad from Mumbai and reached at approximately 6:00am to 7:00am and went to Civil Hospital wherein, he found that whole body of Rekhaben was having burn injuries and she had expired. He asked his brother-in-law-Dipakbhai about the incident who said that due to the kerosene stove, she got aflame. He has further stated that his sister-Rekhaben got married to accused-Dipakbhai 13 years back and his brother-in-law used to physically and mentally harass his sister and due to the same, his sister had consumed some poisonous chemical in past. He further stated that approximately one year before the incident, accused Dipakbhai has asked Rekhaben to bring Rs.40,000/- for purchasing the car and mother of the complainant gave Rs.40,000/- for the same but despite the same, accused Deepakbhai used to make demand time and again and used to taunt and had asked Rekhaben not to tell anyone about the same. Being harassed by accused-Deepakbhai, Rekhaben took step of committing suicide by setting herself on fire.

During cross-examination, PW-1 has stated that he is residing at Mumbai since past 25 years alongwith his family and he used to visit Ahmedabad only for very urgent work and he was at Mumbai at the time of incident. He came to Ahmedabad on the next date of the incident. PW-1 further admitted that he is having two brothers and one sister and all are married according to the rites and ceremonies prevalent in their community in which the dowry is totally prohibited. It is also admitted that he has not made any complaint prior to Exh.8 (present complaint) for any kind of harassment by accused or regarding consuming the poisonous chemical by his sister-Rekhaben and his sister Rekhaben personally has also not made any complaint to police regarding demand of any dowry. It is also admitted by PW-1 that he is not having any personal knowledge about the incident and Rekhaben has not written any suicide note and he was having good relations with accused-Deepakbhai before the incident.

15. PW-2, Dr. Bhavin Shyamlal Shah, has been examined vide Exh.9. During his testimony, PW-2 has stated that he received Yadi Inquest from Anandnagar Police Station for doing postmortem of dead body of Rekhaben Deepakbhai Bariya aged about 30 years. The dead body was identified by the husband of Rekhaben. As per the police Yadi, on 21.04.2013 at 3:15pm, deceased-Rekhaben was preparing food at kerosene stove and for starting the same she used matchsticks

and while she was standing, the kerosene stove turned turtle and the kerosene oozed out from the stove on the cloth of Rekhaben and she got aflame and was taken to Sola Civil Hospital for the primary treatment and for further treatment, she was admitted to Ahmedabad Civil Hospital and during the treatment she expired at 9:00pm and the postmortem was advised to be done from the panel doctors. He further stated that during the postmortem, cause of death is being found as the burn injuries. Postmortem Exh.10 has been prepared by him alongwith panel Dr. Mr. Y.M. Husaini.

During cross-examination, PW-2 stated that during the postmortem, no injury mark or of any assault was found over the body of the deceased. It is further stated that postmortem was done as per the inquest panchnama.

16. PW-3, Vikrambhai Radabhai Mahajan, has been examined vide Exh.13, who has stated that he has signed on the prepared panchnama without going through the contents of the same and has not participated for preparation of same. PW-3 did not support the case of prosecution and declared hostile by Ld. APP for the state. Even during the cross-examination by the Ld. APP for the State, nothing material has come on record which can support the version of the prosecution.
17. PW-4, Hansaben Jayrambhai Bariya, has been examined vide Exh.15. During her testimony, PW-4 has stated that during the

panchnama of the dead body, accused-Deepakbhai Kantibhai Bariya identified the dead body as of his wife-Rekhaben and inquest panchnama Exh.16 has been signed by her as panch-witness No.2

During cross-examination, PW-4 has admitted that there were no mark/signs of any physical injury over the dead body of the deceased-Rekhaben.

18. PW-5, Kamleshbhai Chamanlal Vadhvana, has been examined vide Exh.17. During his testimony, PW-5 has stated that he is residing at the nearby house of the deceased and at approximately 3:15pm on the date of incident, he heard noise from his neighborhood so he came out from his house and found that Rekhaben residing in the neighborhood was shouting as she got aflame so, he called husband of Rekhaben who was standing downstairs in the block with his children and immediately accused-Deepakbhai rushed to his house which was fastened from inside and hence Deepakbhai entered in the house after breaking the latch of the door and used the blanket to seize the fire and called 108 ambulance and took Rekhaben to hospital for treatment.

During the cross-examination, PW-5 has stated that he has given his statement to police without any pressure, undue influence or coercion from any other person and statement given by him to the police is true and correct.

19. PW-6, Bharatbhai Ladhabhai Vaghela, has been examined vide Exh.18. During his testimony, PW-6 has stated that on 21.04.2013, he found that Madhuben and his son Jayesh are locking their house and going somewhere in hurry so he telephonic called to Dilipbhai for informing that his mother and brother are going somewhere after locking the house in hurry, so Dilipbhai called his brother and mother for asking as to what happened to which they replied to Dilipbhai that Rekha has slipped down so Dilipbhai called Jayeshbai and asked what happened to Rekha who informed that Rekhaben has expired and cause of death of Rekhaben was the torture by her husband, father-in-law, mother-in-law and sister-in-law and they have got aflame her. PW-6 has further stated that father-in-law of Rekhaben has expired but her mother-in-law, sister-in-law, brother-in-law and husband got aflame her.

During the cross-examination, PW-6 has stated that when the incident occurred he was at Sayala and he is having very good relations with his nephew-Dilipbhai and he can do anything for him and Dilipbhai can do anything for him. It is also stated that Dilipbhai left for Ahmedabad at 7:00pm in the evening on 21.04.2013 and reached at Ahmedabad on 22.04.2021 at 4:00am. He visited the house of Rekhaben only once at the time of Shrimant. He never came in contact with the neighbours or the relatives of the Rekhaben and complaint was given on the second day of the incident i.e. after last rites

of Rekhaben. It is also admitted by the PW-6 that he has not personally seen the incident and is not having personal information about the incident.

20. PW-7, Madhuben Ashokbhai Bariya, has been examined vide Exh.19. During her testimony, PW-7 has stated that Rekhaben was her daughter and before the incident, 20 years have been passed the marriage of her daughter with accused-Deepakbhai and she was being harassed at her in-laws home but no such incident occurred in the past. She further stated that before six years of the incident, her daughter Rekhaben had consumed some poisonous chemical because of the torture of her in-laws as her in-laws time and again were demanding money, and they used to leave her daughter at her parental home and only through the interference of the relatives and society members, her daughter was taken back to her in-laws home. She further stated that her daughter was aflame by her in-laws. She has given Rs.5,000/-, Rs.10,000/- and Rs.40,000/- to her daughter on the demand of her in-laws.

During the cross-examination, PW-7 has stated that her son-Dilipbhai is 23 years of age and another son-Jayeshbhai is 22 years of age and her daughter-Rekhaben was 21 years of age at the time of incident and his son-Dilipbhai has been residing at Mumbai since 15 to 20 years and her younger son-Jayeshbhai is residing at Sayala and she has never visited police station or Court and her husband got expired before 10-

12 years and she was informed by accused regarding the burn injuries to her daughter Rekhaben. She reached at Ahmeadbad at 9:00pm and Dilipbhai reached to Ahmedabad on the next date of the incident and last rites were performed by the in-laws of the Rekhaben. It is further admitted by the PW-7 that when the police recorded her statement, police official told her to become witness in the present matter. She was at Sayala at the time of incident and is not having personal knowledge about the same.

21. PW-8, Jayeshbhai Ashokbhai Vaghela, has been examined vide Exh.20. During his testimony, PW-8 has stated that his mother received phone call from Deepakbhai that Rekhaben got ablazed so thereafter, we went to Ahmedabad Civil Hospital and when he reached to hospital, his sister already got expired and her entire body was burnt. He further stated that his sister was having grudge with her husband-Deepakbhai as he was not doing any work and has demanded Rs.40,000/- from his sister-Rekhaben and also used to demand other thing of household. He further stated that his sister was being harassed by his brother-in-law-Deepakbhai.

During cross-examination, PW-8 has admitted that he is residing at Sayala permanently and at the time of incident, he was at Morbi as if he did not get any work at Sayala, he used to go at Morbi for work. He admitted that his mother has informed him about the incident happened to Rekhaben and

he is not having personal information about the incident and he reached at Ahmedabad in the evening at 6:00pm with his mother and his brother-Dilipbhai has given complaint on the next date of the incident.

22. PW-9, Kalpanaben Dilipbhai Vaghela, has been examined vide Exh.21. During her testimony, PW-9 has stated that his sister-in-law(Nanad) Rekhaben being tortured at her in-laws home and whenever, her sister-in-law visited them, she used to tell that her husband make quarrel with her, abuse her and assault her so, PW-9 asked her as to why she is going back to her in-laws then she used to reply because of her children she is going back to her in-laws home. She further stated that before the incident, Rekhaben had consumed poisonous chemical on 20.07.2001 and reason of death of Rekhaben is due to torture of her in-laws.

During the cross-examination, PW-9 has stated that she is residing at Mumbai since past 10 years with her husband and children and since the time, she is residing in Mumbai, she has not made any complaint and no one has made police complaint against her. It is also admitted that she has visited only once to her sister-in-law's home and her father-in-law expired in 2009. It is further admitted that when the incident occurred, she was at Mumbai. It is also admitted that she is having no personal information about the incident.

23. PW-10, Kishorsinh Ganpatsinh, has been examined vide Exh.22. During his testimony, PW-10 has stated that he has prepared the Yadi for inquest panchnama and sent the same to Executive Magistrate and after getting permission, he visited Civil Hospital with two panchas and prepared inquest panchnama as per the statement of the panchas and after the inquest panchnama, he filled the Marnottar Form(Inquest Form) Exh.24 and prepared the report for registering the offence.

During the cross-examination, PW-10 has admitted that firstly he received information about the setting fire of the deceased from the Civil Hospital and the history mentioned at Marnottar Form(Inquest Form) at Sr. No.15 has been received from the Civil Hospital and he is not having personal information about the complaint lodged at the police station.

24. PW-11, Prakashbhai Dhirajlal Pandya, has been examined vide Exh.28. During his testimony, PW-11 has stated that he received samples Muddamal from the Chemical Department and he has prepared the FSL report accordingly and forwarded the same to Anandnagar Police Station.
25. PW-12, Chhaganbhai Nathubhai Parmar/IO, has been examined vide Exh.30. During his testimony, PW-12 has stated that Dr. R.K. Choksi has given the vardhi from Sola Civil Hospital and on the basis of the same, PSO has ordered

him to investigate the same and he visited Sola Civil Hospital and met the injured-Rekhaben Deepakbhai Bariya who disclosed that the incident occurred at 3:15pm because of oozing out of kerosene oil from the cooking stove which came in contact to the cloths of the deceased and she got aflame and there is no other reason for the same. Thereafter, he came back to police station and made Janva Jog entry in the station diary bearing No.18/2013 subsequently, the investigation was handed over to him and the injured victim expired during her treatment and the father of deceased Dilipbhai Ashokbhai Vaghela made complaint in writing, hence the offence was registered vide C.R. No.I-54/2018 for the offences punishable U/s 498-A & 306 of IPC at Anandnagar Police Station and further investigation of the same was handed over to him by the PSO thereafter, panchnama was prepared in the present of panchas. Inquest panchnam was prepared by head constable Mr. K.G. Rathod at Civil Hospital thereafter, samples of the deceased was sent for FSL and accused was arrested and statement of the relevant witnesses have been recorded and looking to the evidence available on record, charge-sheet has been filed against the accused.

During the cross-examination, PW-12 has admitted that when he reached Sola Civil Hospital at that time the deceased was in conscious condition and her statement was recorded regarding the incident and statement of witnesses residing

nearby to the place of incident were also recorded. He further admitted that he has not found any suicide note of deceased during his investigation. He further admitted that he did not receive or found any evidence and/or complaint about the harassment of victim regarding demand of dowry during his investigation. He further admitted that he enquired about the application given at Navrangpur Police Station on 20.07.2001 by the deceased father of victim but no record of same was found at Navrangpura Police Station nor any FIR had been lodged in connection of same and it has come on record that at the time of incident, deceased was having 13 years married life with accused. He further admitted that FIR has been lodged on the next date of incident and relatives of the deceased are not residing at Ahmedabad.

26. On the basis of above evidence, prosecution has put its case for convicting accused for committing the offences punishable under section(s) 498-A, 306 of IPC and Section 3,7 of the Dowry Prohibition Act. To ascertain whether accused person has committed the above stated offences or not, this court considers it imperative to discuss relevant legal provisions and ingredients of relevant sections provided by law so that the facts of the present matter could be evaluated in the light thereof. Section 306 IPC is reproduced herein as under:-

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.

Meaning thereby, for inflicting punishment u/s 306 of IPC, first there must be proved 'suicide' and then the 'abetment'. Admittedly, it is a case of suicide and hence we must look to the second ingredient 'abetment'. Abetment has been defined under section 107 of IPC and the same is reproduced herein as under: -

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 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 facilitate the commission thereof, is said to aid the doing of that act.

27. Section 498-A of IPC is reproduced herein as under:-

498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, "*cruelty*" means-

- (a) any wilfull conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

28. Section 3 and 7 of Dowry Prohibition Act are reproduced herein as under:-

3.Penalty for giving or taking dowry.-[1] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall

be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more].

Provided that

7. Cognizance of offences.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974),-

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b).....

29. To reach to the conclusion, whether the accused person has committed the above stated offences or not and whether all the ingredients of the offences mentioned herein above are found in the present matter in hand or not, it is required to discuss and evaluate facts, circumstances and evidence of present matter elaborately.
30. Out of 12 witnesses examined by the prosecution in the present matter, PW-3 and PW-4 are Panch Witnesses and PW-3, Vikrambhai Radabhai Mahajan was being declared hostile by the prosecution and even during his cross-examination by the Ld. APP nothing came on record which could support the version of the prosecution. PW-4, Hansaben Jayrambhai

Bariya identified her signatures at the panchnama of the condition of body of the deceased and in her testimony it has come on record that there was no mark of any physical injuries over the body of the deceased.

31. PW-1-Dilipbhai Ashokbhai Vaghela, PW-6-Bharatbhai Ladhabhai Vaghela, PW-7-Madhuben Ashokbhai Bariya, PW-8-Jayeshbhai Ashokbhai Vaghela and PW-9-Kalpanaben Dilipbhai Vaghela are the family members of the deceased-Rekhaben who in their testimony have deposed that they have not personally seen the incident nor they are having personal knowledge about the incident. Information about the incident had been received by these witnesses initially through the accused-Deepakbhai and then they passed on the information with each other but there are lot of contradictions even in the same. PW-1 has stated that he got information from his mother that his sister Rekhaben got aflame and PW-8 is stating that his sister got slipped. PW-1 is stating that accused used to demand money from deceased so she was unhappy but PW-8 is stating that deceased was unhappy because accused was not earning any livelihood. None of the witnesses had made any complaint in past about any kind of harassment or cruelty inflicted upon the deceased. PW-6 is stating the entire new story by deposing that entire family of accused aflame deceased which is totally contradictory to version of other witnesses.

Nothing material has come on record which could substantiate the version of the prosecution that the accused had been harassing the deceased-Rekhaben and was demanding money and other things to be brought by her from her parental home. Though these witnesses have stated about the payment of Rs.40,000/- to deceased-Rekhaben by PW-7 but looking to the testimony of PW-7 she has no knowledge of exact age of her children as deceased who is having 14 years married life was stated to be of 21 years by PW-7. Moreover, it cannot be said with conformity that the amount if any was given by PW-7-Madhuben Ashokbhai Bariya to deceased-Rekhaben, the same was given as a demand of dowry by the accused or the same was given to by her to her daughter as gift from the parents or the same was given as financial assistance to the accused.

32. The allegations regarding consuming of poisonous chemical could also not be proved through the testimony of the witnesses as there are lot of contradictions in the statement of the witnesses and no record of the alleged complaint was found at Navrangpura Police Station when the IO of the present matter/PW-12 investigated about the same.
33. It has also come on record through the testimony of the PW-12-Chhaganbhai Nathubhai Parmar/ IO of the present matter that after receiving the Vardi from Sola Civil Hospital, he visited to meet the injured/deceased-Rekhaben who was in conscious condition at the time of when PW-12 reached Sola

Civil Hospital and PW-12 recorded the statement of injured/deceased-Rekhaben who in her statement has stated that at about 3:15pm her cloth caught fire due to the kerosene oil coming out of the cooking stove when she was doing cooking and there is no other reason for the said incident. Janva Jog entry bearing No.18/2013 was also made at the police Station accordingly.

34. FIR in the present matter has been lodged on the next date of the incident by PW-1-Dilipbhai Ashokbhai Vaghela who is the brother of the deceased. In his testimony PW-1 has stated that he is residing at Mumbai since past 20 years along with his family and he used to visit very rarely to Ahmedabad. PW-1 was also not having personal knowledge about the incident. PW-12 IO of the present matter has stated that when he recorded the statement of the deceased-Rekhaben she was in conscious condition and no suicide note had been recovered by him during the investigation of the present matter. It has also come on record that the deceased was having 14 years married life with the accused and is blessed with two sons.
35. PW-2, Dr. Bhavin Shyamlal Shah is the doctor who performed postmortem of deceased-Rekhaben after he received the Yadi from Anandnagar Police Station wherein, it has been mentioned that on 21.04.2013 at 3:15pm, deceased-Rekhaben was preparing food at kerosene stove and for starting the same she used matchsticks and while she was standing, the kerosene

stove turned turtle and the kerosene oozed out from the stove on the cloth of Rekhaben and she got aflame due to the same and was taken to Sola Civil Hospital for the primary treatment. PW-2 has also stated that deceased-Rekhaben was further admitted to Ahmedabad Civil Hospital for her further treatment but she expired at 9:00pm during treatment and no injury mark of any assault was found during the postmortem over the body of the deceased.

36. PW-5, Kamleshbhai Chamanlal Vadhvana, is the neighbor of deceased, firstly noticed about the catching of fire to deceased. In his testimony PW-5 has stated that at approximately 3:15pm on the date of incident, he heard noise from his neighborhood so he came out from his house and found that Rekhaben residing in the neighborhood was shouting as she got aflame so, he called husband of Rekhaben who was standing downstairs in the block with his children and immediately accused-Deepakbhai rushed to his house which was fastened from inside and hence Deepakbhai entered in the house after breaking the latch of the door and used the blanket to seize the fire and called 108 ambulance and taken Rekhaben to hospital for treatment. During his cross-examination, PW-5 has stated that he has given his statement to police without any pressure, undue influence or coercion from any other person.

37. From the testimony of the witnesses examined in the present matter, it could be summed up that admittedly deceased-Rekhaben was having 14 years of married life with accused at the time of incident and no complaint of any kind of harassing, demand of dowry, cruelty etc. was ever been lodged by the deceased-Rekhaben to the police and she was in conscious condition when the IO of the present matter reached to hospital for recording of her statement. As per Janva Jog entry, deceased-Rekhaben got aflame as her cloths caught fire through the kerosene oil oozed out from the kerosene stove and she has mentioned that there is no other reason for her being aflame. Allegations of consuming poisonous chemical could not be proved through any of the evidence in the present matter. Merely, alleging that accused used to harass the deceased-Rekhaben and used to demand money and other things to be brought by her from her parental home could not prove the allegations leveled against the accused. Though it has come on record that the cause of death of the deceased-Rekhaben was her being aflame but the allegations that the same was the suicide , committed being abetted at the instance of the accused, is not proved from the evidence placed on record by the prosecution .
38. Hon'ble Apex Court in the matter titled as ***Randhir Singh v. State of Punjab; AIR 2004 SC 5097*** has observed as under:-

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

39. Hon'ble Supreme Court in the matter titled as ***M. Mohan vs. State, AIR 2011 SC 238*** has observed that:

"45. 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."

40. Hon'ble Apex Court in the matter titled as ***Gurcharan Singh vs. State of Punjab; AIR 2017 SC 74*** has observed that:

"22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituent would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide."

41. To establish abetment for suicide, some act or omission, with criminal intent by accused, is required to be established by the

prosecution. For proving the charge under section 306 IPC, there must be some evidence showing that soon before the incident, there was some harassment and torture to the deceased, at the hands of the accused persons, which prompted or instigated him to commit suicide. In order to bring a case within the preview of Sec.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 and the act of abetment by the person charged with the said offence must be proved and established by the prosecution before accused could be convicted u/s 306 IPC.

42. Burden/onus to prove its case is on the prosecution. Hon'ble Apex Court in the matter titled as **Pinakin Mahipatray Rawal v. State of Gujarat; AIR 2014 SC 331** has observed that:

"the burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC."

43. In the present matter, during the testimony of the witnesses, any act or omission on the part of the accused person which led the deceased to commit suicide or any kind of instigation/aid extended by accused which compel deceased to commit suicide has not come on record. There are

contradictions in the statement of family members of the deceased-Rekhaben. They all do not possess personal knowledge of the incident and the neighbour PW-5 who has firstly noticed about the incident has stated that the accused was present at down stairs with his sons at the time of incident.

44. Allegations of Cruelty, harassment, torture and demand of dowry are also not proved through the evidence placed on record by the prosecution.
45. Onus to prove the charges leveled against the accused person is there on the prosecution and there are three well settled cardinal principles of criminal jurisprudence (1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case; (2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and (3) that the onus of the prosecution never shifts(AIR 1977 SC 170 **Rabindra Kumar Dey Vs. State of Orissa**).
46. In a criminal trial, it is not at all obligatory on the accused to adduce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution. The Court has to probe and consider the materials relied upon by the defence instead of raising an adverse

inference against the accused for not producing evidence in support of his evidence because the prosecution cannot derive any strength or support from the weakness of the defence case.

47. Hon'ble High Court of Gujarat in **Sindhi Tarmohmed Jusab & Ors. Vs. State of Gujarat, 2001(1) GLH 36** has observed in Para No.16 that

"the suspicion however, strong cannot take the place of proof. In such cases, we have to travel to accused from the evidence and not from the accused to the evidence. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of the guilty of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

48. In criminal case the burden of proof is on the prosecution to prove the case against the accused beyond reasonable doubt. The burden never shifts. An accused enjoys the presumption

of innocence. There is no duty on an accused person to purge himself of guilt. When there is a lingering doubt, the person is given the benefit of doubt. A court cannot draw an inference of guilt from mere suspicion.

49. For all these reasons and discussions held herein above, this court is of the firm opinion that in the instant case the prosecution could not bring on record any reliable and cogent evidence that the deceased was threatened by accused persons and by conspiring and/or aiding and/or instigating to deceased, accused person has abetted deceased to commit suicide and/or subjected her to cruelty, mental or physical harassment and/or has demanded money and other things to be brought by deceased from her parental's home.
50. Hence, in the light of the aforementioned precedents, the legal provisions as well as the facts of the case on hand it is concluded that the prosecution has miserably failed to prove the charges under section(s) 306, 498-A of IPC read with Section 3, 7 of Dowry Prohibition Act leveled against the present accused person beyond reasonable doubt and conviction under section(s) 306, 498-A of IPC read with Section 3, 7 of Dowry Prohibition Act is not sustainable on mere alleging the same. Accordingly, this court reaches to a conclusion that the accused person herein, is liable to be acquitted, from all the charges leveled against him.

51. In lieu of discussion held herein above, the following final order is passed: -

:- FINAL ORDER :-

- Under Section 235(1) of Code of Criminal Procedure, the accused-**Deepakbhai Kantibhai Bariya** resident of address mentioned above, stands acquitted from the charges leveled under Section(s) 306, 498-A of Indian Penal Code, 1860 and Section 3, 7 of Dowry Prohibition Act, by extending benefit of doubt.
- Accused person is on bail, his bail bond stands canceled and surety is discharged.
- The accused person shall present his personal bond and bail to the tune of Rs.10,000/- (Rs. Ten Thousand only) under Section 437A of Criminal Procedure Code.
- The Muddamaal of the case shall be destroyed after the expiry of the appeal period and in case an appeal is preferred, the same shall be subject to the order passed in such appeal
File be consigned to Record Room after due compliance.

Signed & Pronounced in the Open Court on 05th day of January, 2022.

[Shalini Shital Prasad Jain]
8th Addl. District & Sessions Judge
Ahmedabad [R] at Mirzapur
UIC No.GJ01599

Date :05.01.2022.
Place:Ahmedabad.
P.D.Mishra