

Reserved On : 10/11/2025
Pronounced On : 02/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 329 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

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Approved for Reporting	Yes	No
		No
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STATE OF GUJARAT
 Versus
 MAGANBHAI PREMJBHAI SINDHAV & ORS.

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Appearance:
 MR YUVRAJ BRAHMBHATT APP for the Appellant(s) No. 1
 BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1,2,3
 MR J G VAGHELA(3971) for the Opponent(s)/Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

CAV JUDGMENT

1. This appeal filed by the **appellant – State** under **Section 378(1)(3)** of the Criminal procedure Code, 1973 (Code), assails the judgment and order dated 12.08.2011 passed by the Additional Sessions Judge, Ahmedabad (City) in Sessions Case No.302 of 2006 acquitting the respondents - original accused for the offence punishable under Sections 306, 294(b) and 114 of the Indian Penal Code, 1860 ('IPC', for short).

2.1 The brief facts of the prosecution case are that the deceased complainant Chandrikaben Gulabbhai Solanki, resident of Noblenagar, Ahmedabad has filed complaint before Sardarnagar Police Station, Ahmedabad in Burn Ward of Civil Hospital, Ahmedabad for the alleged offences under sections 306, 294(b) and 114 of the Indian Penal Code,

1860 ('IPC', for short) being C.R.No.II- 3258 of 2005 to the effect that complainant was residing with her parents and was doing household work. In the morning, on 16.10.2005, when she was washing clothes, accused Maganbhai Premjibhai, Gitaben, Mukeshbhai, Janakbhai and Shankarbhai, who were residing nearby, came to her. After her marriage, deceased Gitaben was residing with mother-in-law and brother-in-law at Noblenagar, Ahmedabad as the husband of the deceased was in Military. Thereafter, marriage of brother-in-law Dineshsinh has taken place and at the relevant point of time, wife of Dineshsinh was also residing with deceased Gitaben. During wedlock period, deceased Gitaben has given birth to a baby, which was aged about one year at the relevant point of time.

2.2 As per allegation of the complainant, there was no problem till the marriage of brother-in-law Dinesh, but after marriage of Dinesh, accused persons have started to cause physical and mental harassment to the deceased. That accused Dineshsinh was intending that all the household work of the family is to be carried out by deceased Gitaben and as such deceased Gitaben was imposed with liabilities and due to this several time disputes were taking place with mother-in-law, brother-in-law and wife of brother-in-law.

2.3 It is further case of the prosecution that as the husband of the deceased was in Military, she was also not provided with money for household expenses and the amount which was being sent by husband was kept by her mother-in-law, not only that, no amount was being spent towards medical expenses for daughter of Gitaben.

2.4 It is also the case of the complainant that accused - respondent has written a letter, dtd.16.12.99, addressing to Gitaben, in which she was directed to shift at Ahmedabad and present respondent has given assurance to manage for accomodation. Thereafter another letter dtd.12.1.99, was received by Gitaben which was addressed to one Sangitaben, that present respondent is having love affair with Sangitaben, and therefore, she was unhappy towards respondent accused.

2.5 According to allegations of the complainant, she was brought to the house of respondent on 13.12.99 and thereafter, on 22.12.99, mother in law of the deceased has made a telephone that Gitaben has received burn injuries. Thereafter, on receiving message from the members of her in law, the complainant and his wife Visited V.S.Hospital, Ahmedabad, and before this prosecution witnesses, deceased Gitaben has stated the fact that she was subjected to cruelty by present respondent as well as her mother in law, brother in law and wife of brother in law, and therefore, she has committed suicide.

2.6 Therefore, aforesaid complaint was filed before Sardarnagar Police Station, vide CR No.1-2/2000. At that relevant point of time, remaining accused were arrested. The present respondent – accused was arrested later on and supplementary charge-sheet was filed before concerned Magistrate. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.7 The trial was initiated against the respondents and during course of trial the prosecution examined 04 witnesses as oral evidence and produced 12 documents as documentary evidences. At the end of trial, after recording the statement of the accused under Section 313 of Cr.P.C.,

and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him.

2.8 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant State has preferred the present appeal.

3.1 It was contended by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly prosecution considered and looking the to evidence led by the prosecution, it is established that the prosecution has proved the whole ingredients of the evidence against the present respondents. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

3.2 It has been argued by learned APP that though there is direct and direct evidence connecting the respondent with the commission of offence, learned Sessions Judge could not acquit the respondent accused without appreciating oral and documentary evidence.

3.3 It has been argued that learned Sessions Judge, without taking into consideration the provisions of Section 113(A) of the Evidence Act, has acquitted the accused though the marriage span of deceased and the accused was merely two and a half years. It has been argued that without taking into consideration the documentary evidence i.e. letters which are at Exhs.11 and 12 written by respondent which shows the mental cruelty being meted out to deceased, the learned Sessions Judge has acquitted the accused. Insofar as oral evidences are concerned, learned Judge has not

property taken into consideration the evidence of witnesses at Exhs.9 and 13, who are the original complainant Suvalal Nasibrao (father of the deceased) and Jamnaben Suvalal mother of the deceased, though they have fully supported the case of prosecution. It has been argued that from the evidences of these witnesses, the fact of accused having illicit relationship with one Sangitaben that too on the basis of letters which are found from the house of the deceased i.e. Exhs.11 and 12, has been clearly established without reasonable doubt which, in turn, strengthen the aspect of physical and mental cruelty being meted out to the deceased at the hands of accused respondent. Though the learned Sessions Judge, without appreciating these documentary and oral evidences, has acquitted the accused, which is against the law.

4.1 Per contra, learned advocate Mr.Dagli for the respondent – accused has argued that this Court does not require to interfere with the judgment and order of acquittal passed by the learned Sessions Judge looking to the fact that there are many contradictions and omissions appearing in the evidence of the prosecution witnesses.

4.2 Learned advocate for the respondent accused has argued that the learned judge has rightly acquitted the accused looking to the cross-examination of the complainant which suggests that there was healthy relationship between both the families of the accused and the complainant even after birth of daughter of the deceased. From the evidence of the complainant, it also establishes that even after the death of deceased Gitaben, the relationship between the families of the complainant and accused was normal, it is only after those letters at Exhs.11 and 12 were found from the house of deceased, the complaint has been filed. It

has been argued that had those letters been not found, the complaint would not have been filed. Meaning thereby, the theory of quarrel and physical and mental cruelty being meted out to the deceased at the hands of the accused would not exist if those letters were not found. Insofar as those letters are concerned, it has been argued that such letters though have been produced before the trial Court, they have not been believed by the trial Court and the rest of the respondents accused including the present accused has been acquitted. It has been argued that learned trial Court has rightly appreciated the evidence on record and, therefore, no interference is required and the appeal be dismissed.

5. Having heard learned APP for the appellant State, having gone through the judgment and order of acquittal passed by the trial Court as well as material placed on record, certain aspects which weigh with this Court needs to be discussed.

5.1 Before adverting to the facts of the case, it would be worthwhile to refer to the scope of interference in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

5.2 Further, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrive at would not be arrived at by any reasonable person, and therefore, the decision is to be characterized as perverse.

5.3 Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. That the duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

5.4 In the case of **Babu v. State of Kerala, (2010) 9 SCC 189**), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C., it is held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record.

so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (emphasis applied)

5.5 In ***Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752***, the Apex Court has observed that:

*“The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but **leave of the High Court must be obtained** before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court”.*

5.6 The Apex Court, in case of ***Chandrappa v. State of Karnataka (2007) 4 SCC 415***, reiterated the legal position as under: (SCC p. 432, para 42)

“(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2)The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

5.7 The Apex Court has held that the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

5.8 These decisions clearly express that while exercising appellate powers, even if two reasonable views/conclusions are possible on the

basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

6. In the aforesaid background and considering the oral as well as documentary evidence on record, following aspects weighed with this Court.

i) *Evidence of Prosecution Witness No.5 viz. Devuben Gulabbhai Solanki, who has been examined at Exh.29, is taken into consideration, who has stated that she does not remember the date of offence but only remember that it was Sunday and she happens to be mother of the deceased and she states that she was informed about the incident by one Kalubhai, who was residing in the said area and when she reached at house, deceased Chandrikaben was not there as she was at Civil Hospital. She, therefore, visited Civil Hospital where Chandrikaben informed her mother viz. Devuben that Gitaben is making false stories of Chandrikaben and, therefore, Chandrikaben attempted to commit suicide.*

ii) *In cross-examination of the said Prosecution Witness No.5, she has stated that she had gone for work at Chiloda and distance between her house and Chiloda is about 5 km and she did not remember at what time said incident occurred. She also states in the cross-examination that deceased Chandrikaben did not talk to Devuben when she reached hospital and also states that on the fifth day admission of Chandrikaben at hospital as indoor patient, there was no talk between this witness and deceased Chandrikaben.*

iii) *Prosecution Witness No.6, Gulabbhai D/o. Karsanbhai Solanki Exh.30 and in his deposition he states that accused had not given any threat to Gulabbhai but had given threat to daughter. However, Chandrikaben has not made any statement before the police about the said threat.*

iv) *Prosecution Witness No.7, Muljibhai Karshanbhai Solanki, has been examined at Exh.31 and as per his statement deceased Chandrikaben had poured kerosene on herself and set herself ablaze and committed suicide.*

v) *Evidence of Prosecution Witness No.8, Jayrambhai Punjabhai Parmar, Exh.32 is taken into consideration. He has deposed that during fourth day of Chandrikaben in the hospital, she was conscious.*

vi) *The Sessions Court has also taken into consideration evidence of Prosecution Witness No.9, Harsidaben Gulabbhai Solanki, who has been examined at Exh.33, who has deposed that deceased Chandrikaben was abused and was threatened by the accused and in her cross-examination, it has been deposed that Chandrikaben poured kerosene on herself and committed suicide.*

vii) *The evidence of Prosecution Witness No.10 viz. Mansukhbhai Kesavbhai Solanki, who has been examined at Exh.34, is recorded wherein it has been stated that when he visited Chandrikaben she was not conscious and, therefore, there was no talks between him and Chandrikaben and also stated that Chandrikaben expired on the 5th day after her admission in the hospital.*

viii) *Prosecution Witness No.11 Dr.Jayendra Ratilal Modi has been examined at Exh.35, who had prepared the postmortem which has been produced vide Exh.36.*

ix) *Vide Exh.12, Naarsing Kubersing Vaghela, who was serving as ASI at the relevant point of time at Sardarnagar Police Station, has been examined at Exh.39.*

x) *Vide Exh.40, Babuji Hiraji Pancholi Prosecution Witness No.13 has been examined, he was discharging his duties in Investigation Squad at Sardarnagar Police Station and at Exh.41 the complaint of the complainant Chandrikaben had been taken and her thumb impression was taken in the said complaint. He has stated that deceased Chandrikaben had accidentally burnt herself while making tea.*

xi) *The trial Court has taken into consideration that the statement given by Chandrikaben dated 16.10.2005 clearly states that she was conscious at that time and from the first evidence it comes out that deceased Chandrikaben burnt herself while making tea and the second evidence comes with the fact that accused had abused the deceased and had stated that deceased had relationship with Mukeshbhai and the accused had given threat to the deceased and deceased Chandrikaben had put kerosene on herself and committed suicide but Chandrikaben*

after said burnt injuries lived for five days and in none of the statement mentioned the name of the accused as the persons who had harassed the deceased to commit suicide.

xii) Moreover, real sister of Chandrikaben viz. Harsidaben Gulabbhai Solanki Exh.33, Prosecution Witness No.9, has clearly stated that Chandrikaben herself poured kerosene on herself.

xiii) The prosecution has failed to prove the fact that Chandrikaben has committed suicide because of the physical and mental cruelty done by the accused and moreover, Chandrikaben herself made statement that she burnt herself while preparing tea and, therefore, the view taken by the trial Court that there is no particular regarding the the deceased was subjected to mental and physical torture at the hands of the accused which compelled the deceased to commit suicide.

7. This Court has gone through the judgment and order passed by the trial court and perused oral as well as documentary evidence led by the trial court, more particularly the R & P received from the trial court and also considered the submissions made by learned advocates for the parties.

8. The trial court while considering the evidences in detail has observed that the prosecution failed to prove the case against the has accused beyond reasonable doubt. The trial court has gone into the evidence in detail and has come to the conclusion that the accused are not guilty of the alleged offence.

8.1 In the case of **Mahendra K.C. v. State of Karnataka and another**, [(2022) 2 SCC 129], it has been held by the Hon'ble Supreme Court that the essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. Instigation is to goad, urge forward, provoke, incite or encourage to do

“an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

8.2 In the case of **Mahendra Awase v. State of Madhya Pradesh, 2025 (1) Crimes 347 (SC)**, the observations are made with regard to abetment of suicide. It has been held that in order to bring a case within purview of Section 306 IPC, there must be a case of suicide and in commission of said offence, person who is said to have abetted commission of suicide must have played active role by act of instigation or by doing certain act to facilitate commission of suicide. It has been further observed that the act of abetment by person charged with said offence must be proved and established by prosecution before he could be convicted under Section 306 IPC. It is further observed that to satisfy requirement of instigation, accused by his act or omission or by a continued course of conduct should have created such circumstances that deceased was left with no other option, except to commit suicide.

8.3 The trial Court has rightly held that there was no positive evidence on record to prove that the accused by way of the conduct or spoken words, overtly or covertly, actually aided and abetted or instigated the deceased in such a manner that it leaves no other option for the deceased but to commit suicide.

9. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

10. In the above view of the matter, we are of the considered opinion that completely justified in the trial acquitting the court was respondents of the charges leveled against them.

11. This Court find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

12. This Court, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.

13. The judgment and order dated 12.08.2011 passed by the Additional Sessions Judge, Ahmedabad (City) in Sessions Case No.302 of 2006 acquitting the respondents-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AMIT VISHNUPRASAD MISHRA(HC00187), Principal Pvt. Secretary, at High Court of Gujarat on 02/12/2025 18:24:53