

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1534 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Approved for Reporting	Yes	No
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STATE OF GUJARAT

Versus

KANCHANBEN W/O BHANUSHANKAR JATASHANKAR JOSHI & ORS.

Appearance:

MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1

MR JM BUDDHBHATTI(1239) for the Opponent(s)/Respondent(s) No. 3

MR KASHYAP JANI FOR RC JANI & ASSOCIATE(6436) for the Opponent(s)/Respondent(s) No. 1,2,4

CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 22/06/2026****JUDGMENT**

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 07.06.2012 passed by the learned Additional Sessions Judge, Court No.7, Ahmedabad (hereinafter be referred to as "the trial Court") in Sessions Case No.19 of 2010, whereby the trial Court has acquitted the original accused (respondents herein) from the offences punishable under Section 306 read with Section 114 etc of the Indian Penal Code (hereinafter be referred to as "the IPC").

2. Short facts of the prosecution case are that the complainant Madhavlal Trikamlal Jani registered complaint against the respondents accused with Naroda Police Station, Ahmedabad, which was registered as I-CR-No.-35 of 2006 for the offences punishable Under Section 306 read with 114 of the Indian Penal Code. It is the case of the prosecution that in the complain, complainant as interalia stated that he has three sons and a daughter and his wife died in the year 1999. The names of his sons were (1) Bhupendra (2) Deepak (3) Kamlesh, aged about 31 years. Kamlesh was married with Pallavi @ Priti and was running auto-rickshaw. He has a son named Harsh aged about 6 years. It is further stated in the complaint that the marriage of the daughter Pallavi was performed with Jitendra residing at Ahmedabad and Pallavi was residing at her husband's house. It is further stated in the complaint by the complainant that on 21.01.2006 he was at the house of his elder son Bhupendra at Rakhial, Ahmedabad and at that time, at about 04.00 to 04.30 p.m. his daughter Pallavi and her husband Jitendrakumar had come at Rakhial and they had informed the complainant to go at their house at Krishnanagar. Therefore, the complainant had went at Krishnanagar at his house and seen the dead body of his son Kamlesh and there was a cut mark on the neck of his body. The complainant had inquired about the incident and in reply to that, the wife of his son Deepak namely, Sangeeta had informed the complainant that deceased Kamlesh has committed suicide by hanging himself in his room. It is further stated by the complainant in the complaint that PSI Shri M.M. Dabhi had shown to him a chit written by deceased Kamlesh which was found from the pocket of the Shirt of Kamlesh, wherein it was written by kamlesh that he was committing suicide due to the wrong done by his wife and mother-in-law and father-in-law and due to one Sunny (Sardar), with whom, his wife had relations and his in-laws were

supporting his wife. He had also caught them red-handed, but his in-laws were not ready to believe this relation. The complainant has narrated about the details of the chit in his complaint and has alleged that due to the illicit relations between Pallavi @ Priti and Harvindarsing @ Sunny s/o. Harbhajansing Saini, who was also residing in Parshwannath Township, and due to the support of mother-in-law Kanchanben and father-in-law Bhanushankar to Pallavi for the said illicit relation, his deceased son kamlesh was mentally depressed and Pallavi was behaving arbitrarily and therefore, Kamlesh has taken step of committing suicide by hanging and therefore he has filed the complaint against the said 4 persons.

2.2 On the basis of the said complaint, investigation was initiated and after thorough investigation as there was sufficient evidence against the respondents-accused, charge sheet was filed before the learned Judicial Magistrate First Class, Ahmedabad. As the offences committed by the accused persons was exclusively triable by the Court of Sessions as per the provisions of 209 of Criminal Procedure Code, the learned Judge committed the case to the Court of Sessions and the case was transferred and placed for trial before the learned Additional Sessions Judge, Court No.7, Ahmedabad (City), which came to be numbered as Sessions Case No.19 of 2010. Thereafter, charge was framed against them for the offences punishable under Section 306 read with 114 of the Indian Penal Code. The accused persons pleaded not guilty to the charges and claimed be to tried.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

Sr. No.	PW No.	Name of Witnesses	Exhibit
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A	Complaint		
1	PW-1	Madhavlal Trikamlal Jani	11
B	Witnesses		
1	PW-4	Bhupendra Madhavlal Jani	18
2	PW-5	Deepak Madhavlal Jani	19
3	PW-10	Sudhaben Bipinchandra Shah	39
4	PW-11	Sangitaben Deepakkumar Jani	40
5	PW-12	Pallaviben Jitendra Mehta	42
6	PW-13	Jitendra Prahladbhai Mehta	43
C	Doctor Witnesses		
1	PW-2	Dr. Ramlakhan N. Baranval	13
D	Panch Witnesses		
1	PW-3	Ketan Bipinbhai Shah	16
2	PW-6	Rajendrasinh Digvijaysinh Rathod	20
3	PW-7	Bhikhabhai Natvarlal Thaker	24
4	PW-8	Rajesh Jaynarayan Vyas	25
E	Police Witnesses		
1	PW-9	Police constable - Yogesh Kantilal Sharma	28

4. In addition to this, the prosecution has also produced the following documentary evidence:-

Sr. No.	Particulars	Exhibit
A	Complaint	
1	Complaint - FIR	13
2	Report u/s. 157 to register complaint	30
B	Medical Documents	
1	Yadi for P.M.	14
2	P.M. Note	15
C	Panchnama	
1	Inquest Panchnama	17
2	Panchnama of the scene of offence	21
3	Panchnama of the seizure of natural writing of	26

	deceased	
D	FSL Documents	
1	Muddamal Ravangi Note	33
2	Receipt by FSL	34
E	Other Documents	
1	Chit	31
2	Telephone Wardhi	32

5. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein they denied of having committed any offence and have stated that they are innocent.

6. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against them.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant - State of Gujarat has preferred this Appeal. This Court on 02.04.2013 admitted the appeal and issued bailable warrant to the respondents in sum of Rs.2,000/-.

8. Heard Ms.Jirga Jhaveri, learned Additional Public Prosecutor appearing for the appellant - State of Gujarat and Mr.Kashyap Jani, learned counsel appearing for the respondents - accused at length.

9. Ms. Jhaveri, learned Additional Public Prosecutor appearing for the appellant - State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the trial Court has not considered the

same in its true and proper perspective in passing the judgment and order of acquittal. Ms.Jhaveri, learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. While referring to the evidence of the witnesses and the material collected against the accused, Ms.Jhaveri, learned Additional Public Prosecutor has submitted that the prosecution has established the case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the trial Court has discarded and disbelieved the evidence of these witnesses. She has submitted that the witnesses have fully supported the case of the prosecution, however, the trial Court has not appreciated the same and passed the judgment and order of acquittal which is illegal and unjust. She has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the trial Court has disbelieved and discarded the evidence of the witnesses.

9.1 According to Ms.Jhaveri, learned Additional Public Prosecutor, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. She has prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

10. Per contra, Mr.Kashyap Jani, learned counsel for the

respondents - accused has supported the impugned judgment and order and has submitted that the trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against them. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the trial Court has rightly acquitted the accused as the prosecution has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has submitted that the appeal being meritless deserves to be dismissed and the judgment and order of acquittal deserves to be confirmed.

11. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the questions arise for determination are as under:-

- (1) whether the trial Court is justified in passing the judgment and order of acquittal.
- (2) whether the trial Court has rightly appreciated the evidence led by the prosecution in recording the reasons.
- (3) whether there is any illegality, irregularity or any perversity in the impugned judgment and order of acquittal.

12. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. On perusal of the record and after considering the depositions of the witnesses, the fact reveals that the immediate relatives of the deceased being PW-1 - complainant - father of the deceased Kamleshbhai, PW-4 - Bhupendra

Madhavlal Jani, eldest brother of the deceased Kamleshbhai, PW-5 – Deepak Madhavlal Jani, brother of the deceased Kamleshbhai, PW-11 – Sangitaben Deepakkumar Jani, sister-in-law of the deceased Kamleshbhai, PW-12 – Pallavi Jitendrakumar Mehta, sister of the deceased Kamleshbhai, none of the witnesses have supported the case of the prosecution. The fact remains that the death of the deceased was a homicidal death and it was proved through the deposition of PW-2 – Dr. Ramlakhan N. Baranval Exh.-13 but, whether the offence under Section 306 read with Sections 107 and 114 of the IPC is made out against the present respondents or not is a moot question. The complainant has made allegations against the respondent No.1 being the mother-in-law of the deceased Kamleshbhai, respondent No.2 being the wife of the deceased Kamleshbhai, respondent No.3 being neighbour of respondent Nos.1 and 2 and respondent No.4 being the brother of respondent No.2 and son of respondent No.1, with regard to the effect that the respondent No.2 wife of the deceased had some illicit relationship with respondent No.3 and because of that, there was a dispute between husband and wife i.e. the deceased Kamleshbhai and respondent No.2 herein and therefore, the respondent No.2 was residing at her parental home prior to the date of incident and as she did not return to the matrimonial home, the deceased Kamleshbhai felt bad and committed suicide by hanging himself. Except these allegations, no other allegations are made against the respondents and there was no iota of evidence produced before the trial Court with regard to the extra-marital affair of the respondent No.2 with respondent No.3 and no evidence has come forth on record with regard to the same. The so-called chit found in the pocket of the shirt of the deceased has not been proved to have been written by the deceased, as no evidence from any handwriting expert has been brought on record to establish

the same. From the deposition of PW-1, father of the deceased, no further evidence has come on record to establish the allegation that, by their acts or omissions, all four accused drove the deceased to commit suicide or that they abetted the commission of the offence in question and no evidence was led by the prosecution before the trial Court to prove this aspect. None of the witnesses have given any positive evidence from which the trial Court can draw an inference that the accused were involved in the commission of the alleged offence or are guilty thereof. Therefore, unless and until specific and cogent evidence is brought on record before the trial Court establishing that all four accused were involved in the alleged offence and they dragged the deceased into circumstances leading to the commission of the crime, and they instigated the deceased in such a manner that the deceased was left him with no alternative but to end his life, no finding of guilt can be recorded against the accused persons. Herein the present case, there is no evidence worth the name adduced by the prosecution to prove the same. Therefore, after considering the facts discussed by the trial Court while delivering the impugned judgment and order of acquittal, as well as the oral evidence led by the prosecution, the trial Court ultimately passed the impugned judgment and order of acquittal. In view of the above, I am of the opinion that the trial Court has not committed any error of facts and law in passing the impugned judgment and order and there is no any illegality and infirmity found in the judgment and order.

13. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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 their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

14. 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 arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. 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. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

15. The scope and principles are enunciated by the Hon'ble Apex Court in case of ***Chandrappa and others Vs. State of Karnataka***

reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, I am in complete agreement with the findings recorded by the trial Court.

16. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise 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 emphasize 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.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained.”

17. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the

alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

18. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

19. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

Dolly