

Reserved On : 23/03/2026
Pronounced On : 08/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1997 of 2010

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STATE OF GUJARAT

Versus

KAMLESH KESHUBHAI @ KALUBHAI SOLANKI & ORS.

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Appearance:

MS. MEGHA CHITALIYA, APP for the Appellant(s) No. 1

MR ASHISH M DAGLI(2203) for the Opponent(s)/Respondent(s) No. 1,2,3,4

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

CAV JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 27.08.2010, passed by the learned Additional Sessions Judge, Morbi, Dist- Rajkot in Sessions Case No.52/2008, for the offences punishable under Sections 306 and 114 of the Indian Penal Code, the appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “**the Code**”).

2. The prosecution case as unfolded during the trial before the trial Court is that the complainant was residing with his family, including his son’s daughter Nitaben. On 21.10.2007, it is alleged that Nitaben was burnt inside her house and was thereafter taken to the hospital, where she

succumbed to burn injuries. It is further the case of the prosecution that prior to the incident, certain accused persons had allegedly threatened Nitaben and her family members, and despite such intimidation, no effective protection or assistance was provided. Therefore, the complaint was filed against the respondent/s-accused.

3. After investigation, sufficient *prima facie* evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Sessions Case No.52/2008. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined 7 witnesses and also produced 14 documentary evidence before the trial Court, which are described in the impugned judgment are as under;

Oral evidences

Sr. No.	Exh. No.	Name of Witness	Particulars
1.	13	Dr. Premjibhai Bhurabhai Nariya	Doctor who conducted the post-mortem
2.	17	Jabuben Mudjibhai	Complainant

3.	19	Baldev Prabhulal Kavadiya	Executive Magistrate, who recorded the dying declaration
4.	22	Shamjibhai Mudjibhai	Witness
5.	23	Parsottam Ravjibhai Chauhan	Witness
6.	24	Dr. Hitesh Prabhulal Dhruv	Doctor who examined the injured and provided first aid primary treatment
7.	26	Jayantilal Jethalal Chaudhary	Investigating Officer

Documentary Evidences

Sr. No.	Exh. No.	Particulars	Date
1.	14	Yadi for performing post-mortem.	21/10/2007
2.	15	Post-mortem report.	21/10/2007
3.	18	Complaint.	20/12/2007
4.	20	Yadi for taking death declaration.	19/10/2007
5.	21	Dying Declaration of the deceased.	19/10/2007
6.	25	Death certificate.	21/10/2007
7.	28	Inquest panchnama.	21/10/2007
8.	29	Application for registering the offence.	20/12/2007
9.	30	Inquest panchnama.	21/10/2007
10	31	Post-mortem report.	21/10/2007
11	32	Panchnama of the scene of offence.	21/10/2007
12	33	Arrest panchnama of the accused.	11/02/2008
13	34	Panchnama of search of Ravjibhai Harjibhai.	24/02/2008
14	35	Panchnama of search of Lalubhai Arjanbhai.	24/02/2008

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which the

charge was framed, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by

the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial Court, the following aspects weighed with the Court:

8.1 In view of the Death Certificate, that has been placed on record of Respondent No 2 and 4, the present appeal survives only against Respondent No's 1 and 3. The prosecution has mainly relied on the complaint produced vide Exh-18, dated 20.12.2007. It is the case of the prosecution that because of the constant harassment of the accused, deceased Nitaben Ravjibhai Chauhan poured kerosene upon herself on 19.10.2007, and succumbed to the said injury and expired on 21.10.2007. It is the case of the prosecution that on 19.10.2007 when the complainant asked the deceased as to

why she poured kerosene upon herself at that time the deceased had informed the complainant that when she used to come to the factory for work at that time the accused had threatened her, and because of the said threats deceased had committed suicide. The deceased happens to be the grandchildren of the complainant, after the deceased poured kerosene and lit herself the deceased was taken to the hospital Dr. Hitesh Dhruv, and the Yadi was sent by A.S.I. A Division Police Station, Rajkot, to the Executive Magistrate for taking the dying declaration, wherein the doctor has acknowledged that the patient is conscious. The dying declaration is produced vide Exh-21, and the same is taken at the hospital of Dr. Hitesh Dhruv on 19.10.2007, at 17.55 hours, and after the dying declaration is completed at 18:20 hours, the doctor put an endorsement that the patient was conscious throughout the dying declaration taken on 19.10.2007 at 18:20 hours.

8.2 The prosecution has examined Executive Magistrate, Baldev Kawaria as PW-3, who has stated that he had relied on the opinion given by the treating doctor that the patient i.e. the deceased, was fit to give dying declaration. He stated

that he had reached the hospital at 17:45 hours. The treating doctor, Dr. Hitesh Dhruv has been examined vide Exh-24, as PW-6, he has stated that bandage was put all over the burnt parts of the deceased and also on her hand however, her fingers were open, and the said treating doctor had also made an endorsement on the Yadi, and had signed the dying declaration.

8.3 The prosecution has examined Dr. Premji Nariya as PW-1, who had conducted the post-mortem on the deceased, who has been examined vide Exh-30. The post-mortem report is produced vide Exh-15, wherein the cause of death is stated to be shock due to burns. In his deposition, he has stated in his cross-examination that both the hands of the deceased were burnt, and at the time when the post-mortem was done, as per his opinion, the deceased was not in a position to write with her burnt fingers.

8.4 The grandmother of the deceased and the complainant Jabuben Mudjibhai has been examined as PW-2, vide Exh-17 and in her cross-examination she has stated that at the time when the incident had taken place she along

with her son Ramji and Nita were present, and there was no one else who was present, and deceased was present in the house for the entire day, and she had not talked with anyone in the house on the said date. She has also in her cross-examination admitted that the accused were not present at the time of incident and there was no occasion where anybody would have scolded the accused. The said witness has also stated that before the said incident there was no complaint filed against the accused, and the deceased had not informed the said witness that the accused were harassing her. She has also stated that she is not aware as to why the deceased poured kerosene upon herself and set herself ablaze, and that she is not aware of the cause for which the deceased had committed suicide.

8.5 The prosecution has therefore examined the uncle of the deceased Shamji Mudji vide Exh-22, as PW-4, in his deposition he has stated that he was not aware of any harassment done by the accused on the deceased, but the said facts have been informed by his wife. The prosecution has not examined the wife of the said witness who has given the said information. He has also stated in his cross

examination that it is true that initially the deceased had informed them about the incident, and thereafter, she was taught as to what statement she has to give before the Mamlatdar.

8.6 The cousin brother of the deceased Purushottambhai has been examined as PW-5, vide Exh-23. In his examination-in-chief he has stated that when he had asked the deceased she had narrated about the harassment of Accused No.1, and in his cross-examination the said witness has stated that before the deceased had committed suicide she had not informed the reason for committing suicide nor he is aware of any such reason.

8.7 The P.S.I. Jayantibhai Chauhan has been examined as PW-7, Exh-26, in his deposition he has stated that in his investigation it was found that as the deceased wanted to go for a pilgrimage to Pavagarh Temple, and as she could not therefore, she committed suicide.

8.8 The Sessions Court while deciding the case has rightly come to the conclusion that in the dying declaration

produced vide Exh-21, the deceased had only given the name of the Accused No.1, and it is only in the complaint for the first time that the grandmother of the deceased has given names of the Respondent No. 2-4.

8.9 The doctor who had conducted the post-mortem report clearly states that the deceased had burnt her hands, and was not in a position to write, and the treating doctor has stated in his deposition that bandages were placed all over the body of the deceased where she was burnt, but her fingers were open and she could sign therefore, there are contradictions in the deposition of the treating doctor and the doctor who had conducted the post-mortem.

8.10 Moreover, no justification has been given by the prosecution for filing a complaint after a period of two months. The alleged offence took place on 19.10.2007, the deceased had died on 21.10.2007, and the complaint that has been filed by the grandmother is dated 20.12.2007.

8.11 The complainant has herself stated that the deceased had informed her about the said harassment, and

that none of the accused were present at the time of the incident. Moreover, no complaints have been filed by the deceased of harassment done by the accused on the deceased. It also transpires that the deceased was working, and there is no previous complaint filed by the deceased against the accused for harassment.

8.12 The only allegation that has been made is that Accused No.1 was harassing the deceased, and wanted to marry the deceased. Therefore, it also transpires that there was some disturbance with the deceased with respect to going for pilgrimage to Pavagarh Temple, but the same was not fulfilled.

8.13 If the treating doctor i.e. Dr. Hitesh Dhruv's evidence is taken on record, he does not remember whether, at the time when the dying declaration was taken any other family members of the deceased were present at the said time. Even from the evidence of the Investigating Officer, who has been examined as Jayantilal Chaudhary vide Exh-26, does not prove the offence against the accused.

9. The evidence on record and the glaring omission on the prosecution as pointed out above leaves no room of doubt that the order passed by the trial Court is as per law. 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. In the present case, the prosecution has also not been able to prove the clear motive of the accused to commit offence of abatement. There is also no close connection between the accused's action and the deceased's choice to commit suicide. In view of the said fact, the prosecution has not been able to prove that the accused have stimulated the deceased to commit suicide.

9.1 The prosecution has not proved that there was a clear motive to commit the offence of abatement. The prosecution has also not proved that the accused proceeded to encourage and/or irritate the deceased through words or insults and that the accused intended to urge the deceased to end it all by committing suicide. The prosecution has also not been able to prove the direct connection between the incitement and committal of suicide. The prosecution has also not been able to prove direct or indirect act of incitement to

the commitment of suicide. The prosecution has also not been able to prove by accusation of harassment without any positive action on the part of the accused close to the time of occurrence that led and forced the deceased to commit suicide.

9.2 The present matter turns on whether the conduct attributed to the accused satisfies the legal threshold of abetment of suicide. Therefore, read as a whole, it can be said that mere occurrence of a suicide does not automatically trigger rigours of the Section. The penal consequences under Section 306 of the Indian Penal Code arise when the prosecution is able to establish that the accused abetted and had a role in provoking or facilitating that suicide. Therefore, this twin test distinction is required to be borne in mind.

9.3 Abetment, as understood in criminal jurisprudence, is not a broad moral expression but a term of precise statutory meaning. Section 107 IPC delineates its contours: instigation, conspiracy, or intentional aiding. Each of these modes presupposes active involvement. The law does not punish omission except in some cases, it punishes intentional encouragement or positive facilitation of a prohibited act.

9.4 It is therefore not sufficient to show that the

deceased was unhappy, distressed, or subjected to unpleasant treatment. The jurisprudence developed by the Hon'ble Supreme Court has consistently underscored that routine domestic disagreements, suspicion between spouses, or episodes of harassment do not ipso facto amount to instigation. Rigours of this Section intervene only where there is clear evidence of mens rea and a direct causal link between the accused's conduct and the decision of the deceased to commit suicide.

9.5 The concept of instigation demands something more than mere reproach or accusation. It connotes an active suggestion, an incitement, or conduct of such intensity that it operates upon the mind of the victim and pushes him or her toward this drastic and unfortunate step. The prosecution therefore, must demonstrate either a deliberate intention to drive the deceased to suicide or knowledge that the conduct in question was likely to produce that consequence. Equally indispensable is the requirement of proximity. The law insists on a live and immediate nexus between the acts complained of and the suicide. A remote or generalized allegation is insufficient. There must be evidence showing that the accused engaged in conduct so closely connected in time and effect with the suicide that it can reasonably be said to have triggered the fatal act.

9.6 No material has been brought on record demonstrating any proximate act immediately preceding the suicide which could be construed as instigation. Nor is there evidence of a positive act amounting to intentional aid. The essential ingredients of abetment -namely, culpable mental state coupled with active or proximate conduct-are not established.

9.7 On an overall assessment of the evidence, the prosecution has failed to demonstrate the existence of the foundational elements necessary to sustain a conviction under Section 306 IPC.

10. 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.

10.1 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.

10.2 In the case of **Amalendu Pal alias Jhantu versus State of West Bengal, (2010) 1 SCC 707**, it has been held that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the

commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable.

10.3 In the case of **Rajesh v. State of Haryana, (2020) 15 SCC 359**, after considering the provisions of Sections 306 and 107 of IPC, the Court held that conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide.

10.4 In the case of **Amudha v. State, 2024 INSC 244**, it was held that there has to be an act of incitement on the part of the accused proximate to the date on which the deceased committed suicide. The act attributed should not only be proximate to the time of suicide but should also be of such a nature that the deceased was left with no alternative but to take the drastic step of committing suicide.

11. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest

illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, this Court is of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

12. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

13. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in **AIR 1981 SC 1417** wherein it is held as under:

“... This court has observed in Girija

Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

14. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

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

“The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High

Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

16. As observed by the Hon'ble Supreme Court in the case of ***Rajesh Singh & Others vs. State of Uttar Pradesh*** reported in ***(2011) 11 SCC 444*** and in the case of ***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh*** reported in ***(2011) 6 SCC 394***, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by

the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

17. In the case of **Chandrappa v. State of Karnataka**, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

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

(2) The Criminal Procedure Code, 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.”

18. The Hon'ble Apex Court, in a recent decision, in the case of ***Constable 907 Surendra Singh and Another V/s State of Uttarakhand reported in (2025) 5 SCC 433***, has held in paragraph 24 as under:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

19. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

20. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondent/s - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

21. In view of the above and for the reasons stated above, the present Criminal Appeal fails and the same deserves to be dismissed and is *dismissed*, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.

ADITYA SINGH

(SANJEEV J.THAKER,J)