



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL NO. 1525 of 2009**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MRS. JUSTICE M. K. THAKKER**

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

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STATE OF GUJARAT

Versus

HARSHADBHAI @ HANSO MANIBHAI SOMABHAI KHANT & ORS.

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Appearance:

MR.CHINTAN DAVE, APP for the Appellant(s) No. 1

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

RULE SERVED for the Opponent(s)/Respondent(s) No. 1,3

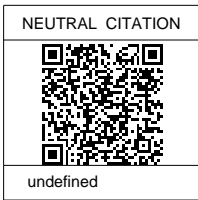
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**CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER**

**Date : 19/06/2024**

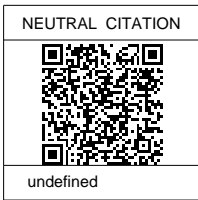
**ORAL JUDGMENT**

1. This appeal is filed by the State of Gujarat challenging the judgment and order of acquittal dated 20-04-2009 passed by the Learned Additional Sessions Judge, Fast



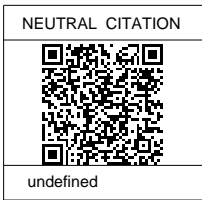
Track Court No.5, Kheda at Nadiad in Sessions case No. 09 of 2009, whereby the respondent-accused came to be acquitted for the offence punishable under section 306, 498 A read with section 114 of Indian Penal Code, 1860 (hereinafter referred to as the IPC).

2. It is the case of the prosecution that, daughter of the complainant namely Nayanben was married with the accused No.1 namely Harshadbhai @ Hanso Manibhai Somabhai Khant 6 years ago from the date of the incident. Out of their wedlock, she gave birth to one daughter and after the birth of daughter, she was thrown out from the matrimonial house by the husband after being assaulted. On inquiring, daughter had informed the complainant that the husband was demanding money, and on that ground she was being tortured by all the accused. The complainant has given an amount of Rs.20,000/- and she was sent back to the matrimonial house with an understanding that no further harassment would be caused by her in-laws. On 17-06-2008 at around 9.30 in the morning complainant was informed that, daughter hanged herself on the hooks fitted on the ceiling at the matrimonial house and the complainant and



his wife were informed to reach immediately. With the aforesaid allegation, the FIR being I-CR No.88 of 2008 came to be registered for the alleged offence against husband, brother-in-law and mother-in-law.

- 2.1. On setting the criminal law in motion, investigation commenced. The statement of eye witnesses were recorded and the documentary evidences were collected, thereafter chargesheet came to be submitted before the learned competent court. As the aforesaid case was triable by the learned Court of Sessions, same was committed to the learned Sessions Court and numbered as sessions case No.9 of 2009. Learned trial court has framed the charges below Exh.4 and recorded the plea of accused below Exh. 5 to 7 wherein the accused pleaded not guilty and claimed to be tried. To substantiate the charge, prosecution has examined 8 witnesses and produced 13 documentary evidences and filed the closing pursis below Exh.34, thereafter further statement under section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as the Cr.P.C.) came to be recorded and all incriminating material put before all the accused. In further statement, accused pleaded false

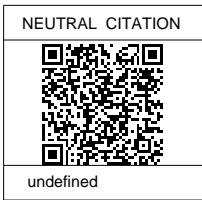


implications and prayed to be acquitted.

2.2. After considering the material placed and arguments advanced by the learned advocates for the respective parties, learned trial court has acquitted all accused for the offence alleged, which is subject matter of challenge before this Court.

3. Heard learned APP Mr.Chintan Dave for the State and though rule is served no one has represented accused No.1 and 3 and during the pendency of the appeal, respondent No.2 expired, therefore, appeal was abated qua respondent No.2 namely Maniben.

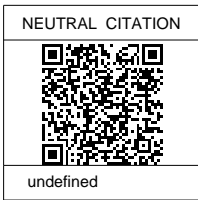
3.1. Learned APP Mr.Dave has submitted that, though prosecution has established the case beyond reasonable doubt, learned trial court has acquitted the respondent-accused without any cogent reasons. Learned APP Mr.Dave submitted that, though prosecution has proved that, the money which was demanded was provided by the complainant, the learned trial court did not believe the case on the ground that, the aforesaid amount was to meet with the household expenses of the matrimonial house. Learned APP Mr.Dave submitted that, though



marriage span of the deceased was below 7 years and the presumption under section 113(A) of the IPC is available. Learned trial court has without considering the presumption, acquitted the respondent-accused from the charges.

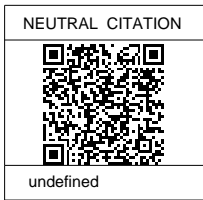
3.2. Learned APP Mr.Dave submits that, though the prosecution has proved it's case by leading the evidence of the complainant below Exh.19, the mother below Exh.21, witnesses below Exh.22 and 23, no major discrepancies were found during the cross examination which may falsify the case of the prosecution, learned trial court has acquitted the respondent-accused from the charges. Learned APP Mr.Dave submits that, minor discrepancies were given much weightage by the learned trial court while acquitting the respondent-accused without any cogent reasons and therefore the appeal deserves to be allowed and accused are required to be convicted for the offence alleged.

4. Considering the submissions made by the learned APP Mr.Dave and record and proceedings of the learned trial court, it transpires that prosecution has proved the



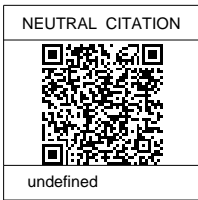
unnatural death of the daughter of the complainant by the evidence of the medical officer who was examined below Exh.10 namely Dr.Giriraj Lalabhai Chauhan who conducted the autopsy of the deceased. From the aforesaid evidence it comes on the record that, there were no external injuries on the body of the deceased and the cause of death was due to Asphyxia i.e. death due to hanging.

5. To prove the case for the offence punishable under section 306 read with 107 of the IPC, prosecution has examined the complainant I,e, father of the deceased below Exh.19 and the mother of the deceased below Exh.21. On the examination of the above witnesses it transpires that, marriage of the deceased was solemnized prior to 6 years with the accused No.1, one daughter namely Hinaben was born out of the wedlock and she was staying with the husband, mother-in-law and brother-in-law. Deceased was repeatedly sent to the house of the parents to collect money. On one occasion she was sent with a demand of Rs.50,000/- and as the complainant could only arrange the amount of Rs.20,000/- the complainant had given the said amount



and assurance was given by the in-laws that now no harassment would be caused to the deceased. On the faithful day of 17-06-2008, she committed suicide by hanging herself and thereafter FIR came to be lodged.

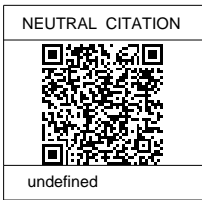
5.1. During the cross examination of the above said witnesses, it comes on the record that, prior to the marriage with accused No.1, previously the daughter was married with another person and had taken divorce. She was remarried with accused No.1. It was admitted by the father that, for 2.5 years there was no harassment at the hands of the accused persons and even on the date of the deposition also, witness was searching for the real reason for the suicide of the daughter. The amount which was provided was borrowed from the teacher of the village namely Sursangbhai and the same was given for the purpose of fitting the door in the house of the deceased. Prior to that there was no door in the house. It is admitted by the father that repeated demands and harassment was not stated in the complaint or the statement recorded before the police. The FIR which was produced before the learned trial court was exhibited



below Exh.20. From the cross examination of the mother, it comes on record that, at the time of borrowing the amount, an assurance was given that on the maturity of Fixed deposit the amount will be returned back. Prosecution further examined the brother namely Jagdishbhai Manubhai below Exh.22, uncle of the deceased Bhagvanbhai Bhikhabhai below Exh23, sister-in-law of the deceased namely Kusum below Exh.24, they reiterated the same facts as stated by the parents of the deceased.

5.2. Prosecution further examined the PSO of Nadiad Rural Police Station namely Arunaben Madhusudan below Exh.25 who recorded the FIR and made entry in the station diary. Lastly, the prosecution has examined the Investigating Officer namely Manjibhai Malabhai Chauhan below Exh.27 from whose evidence it comes on the record that prior to the registration of FIR, Janvajog was given by the husband-accused No.1 which was registered as accidental death No.15 of 2008. The aforesaid Janvajog entry was produced below Exh.33, wherein husband had informed that previous night wife has





offered meal which was not taken by the husband and in the early morning he left the house in the rickshaw for his business and due to the same, the wife has committed suicide. It is stated by the husband-accused No.1 that, he is running his rickshaw in school Vardi. The investigation officer further produced the report of the forensic science laboratory and during the cross examination, it came on record that, no witnesses stated before me that there was harassment at the hands of the in-laws, and on committing suicide, the husband immediately informed the police.

6. The provision of section 107 & 306 for which the accused were tried is produced hereinbelow:

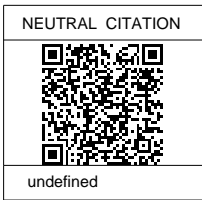
***Section 306 - Abetment of suicide.-***

*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.*

***Section 107 - Abetment of a thing***

*A person abets the doing of a thing, who:*

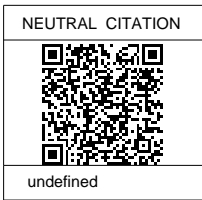
- 1. Instigates any person to do that thing; or*
- 2. Engages with one or more other person or persons in any conspiracy for the doing of that thing,*



*if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

*3. Intentionally aids, by any act or illegal omission, the doing of that thing.*

7. Considering the above provisions, it reveals that, the prosecution has to establish the positive act on the part of the accused to instigate or aid in committing suicide and there has to be clear *mens rea* to commit suicide. From the evidence placed on record by the prosecution, it comes on record that there was no active or direct act which leads the deceased to commit suicide. The demand of amount appears to be for the installation of the door in the house. From the evidence of the mother, it comes on record that, the assurance was given by the husband that on maturity of the fixed deposit the amount would be repaid. Except this one incident, no other incident was placed on record by the prosecution to prove the case of harassment. The conduct of the husband also appears to be natural as, on committing suicide, the accused No.1 immediately informed the police officer and gave the Janvajog and his statement which was exhibited below Exh.33 reveals that there was minor wear and tear of the



marriage life. It is true that the marriage span of the deceased was below 7 years and the presumption under section 113(A) of the Evidence Act would come into play, but the presumption in itself would not be an evidence but only meet the prima facie case for the prosecution in whose favour it exists. As the word used in section 113(A) of the Evidence Act is “may presume”. The relevant section is reproduced hereinbelow:-

***S. 113 A - Presumption as to abetment of suicide  
by a married woman***

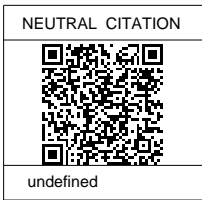
*“When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”*

***S. 4 - "May presume".***

*Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.*

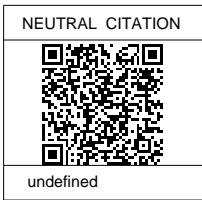
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8. A Court, where it “may presume” a fact, as a discretion to presume it as proved or to call for the confirmatory



evidence of it, as the circumstances require, in those cases presumption is not hard and fast presumption incapable of rebuttal. The prosecution first has to prove its case beyond reasonable doubt and only then presumption under section 113 A of the Evidence Act would come into force. It transpired that previously marriage of the deceased was solemnized with the other person and after taking divorce prior to 3 years, she married to the accused No.1. From the evidence of the father, it comes on record that for 2.5 years there were no harassment and on one occasion, an amount of Rs.20,000/- was provided by the complainant to the accused person. From the evidence of the brother and sister-in-law no specific incident was mentioned and there appears to be general allegations against the in-laws. Learned trial court acquitted the respondent-accused from the charges and this court finds no infirmity or illegality in the impugned judgment and order of the acquittal.

9. This Court has considered the ratio laid down by the Apex Court while considering that this being an acquittal



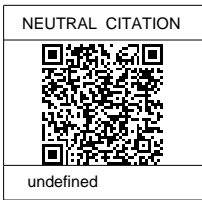
appeal, as per the law laid down by the Apex Court in case of ***Chandrappa and others vs. State of Karnataka, reported in (2007) 4 SCC 415*** wherein the general principles were laid down regarding the powers of the Appellate Court while dealing with the appeal against an order of the acquittal, which are reproduced hereinbelow:

*“(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 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."*

10. In view of overall circumstances, this court deems it fit not to interfere with the impugned judgment and order of acquittal dated 20-04-2009 passed by the Learned Additional Sessions Judge, Fast Track Court No.5, Kheda at Nadiad in Sessions Case No. 09 of 2009 needs no interference.
11. Resultantly, the present appeal is dismissed.

NIVYA A. NAIR

**(M. K. THAKKER,J)**