

(2025) 01 GUJ CK 0027

Gujarat High Court

Case No: Criminal Appeal (Against Acquittal) No. 1298 of 2013, Criminal Appeal No. 1677 of 2013

State of Gujarat

APPELLANT

Vs

Vs Tarunkumar Karsanbhai
Mayavanshi & Ors.

RESPONDENT

Date of Decision: Jan. 3, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 161, 209, 313
- Indian Penal Code, 1860 - Section 107, 113B, 114, 304(B), 306, 498A
- Dowry Prohibition Act, 1961 - Section 3, 6
- Indian Evidence Act, 1872 - Section 113B

Hon'ble Judges: Ilesh J. Vora, J; S.V. Pinto, J

Bench: Division Bench

Advocate: LB Dabhi, Kashyap R Joshi, A R Rockey, Hardeep L Mahida

Final Decision: Dismissed

Judgement

PW 1 â€" Exh. 14,"Kamleshbhai Manharbhai Parmar, complainant

PW 2 â€" Exh. 16,"Sanjaykumar Chhotelal Saroj, panch witness

PW 3 â€" Exh. 17,"Kantaben Fatehsingh Vasava, panch witness

PW 4 â€" Exh. 18,"Navinbhai Bhailalbhai Vanand, panch witness

PW 5 â€" Exh. 21,Yogeshbhai Manharbhai Parmar

PW 6 â€" Exh. 27,Kashiben Manharbhai Parmar

PW 7 â€" Exh. 31,"Rohitbhai Bijalbhai Bharwad, panch witness

PW 8 â€" Exh. 32,"Amitbhai Arvindbhai Panchal, panch witness

PW 9 " Exh. 33,"Kamleshbhai Uttambhai Bhatia, panch witness

PW 10 " Exh. 34,"Manilal Fulabhal Khristi, panch witness

PW 11 " Exh. 35,Umedlal Moolchand Meena

PW 12 " Exh. 36,"Tajuddin Badruddin Malek, Police Head Constable

Exh. 15,Complaint

Exh. 19,Inquest Panchanama

Exh. 24,Suicide note by deceased Vaishaliben

Exh. 25,Notebook containing handwriting of deceased Vaishaliben

Exh. 26,Suicide note by deceased Vaishaliben

Exh. 28,Panchanama of place of incident

Exh. 29,Panchanama of examination of accused no.1

Exh. 30,Panchanama of examination of other accused

Exh. 40,Post Mortem report along with certificate

Exh. 42,Extract of station diary

Exh. 44,Panchanama regarding statement of train guard

Exh. 47,"Panchanama of seizure of notebook containing handwriting of deceased Vaishaliben

Exh. 48,FSL Report by Handwriting Expert

Exh. 49,Letter by FSL for taking articles

Exh. 50,Opinion

Exh. 52,Letter by Superintendent of Police to FSL

Exh. 53,Detailed report by Handwriting Expert

that, the authorship of the natural writing and disputed are of the deceased. Thus, it is proved and established that, before the deceased could commit",

suicide, she wrote herself a short note, stating therein the reason for the suicide. Exh. 24 and 25 are not distinct and different suicide note but it is",

written in two copies and their contents are same and common and therefore, as such, there is a single suicide note found from the different part of",

the body of the deceased.,

13.4 The case of the prosecution mainly hinges upon the suicide notes Exh.24 and 26. The said suicide notes were found from the body of the,

deceased and the Handwriting Expert, PW.18, opined that, the authorship of the natural writing (notebook) Exh.25 and disputed (Exh.24 and 26) are",

of the deceased. Thus, it is necessary to refer the contents of the suicide note which reads thus:",

“Hello, my name is Vaishali. My last wish is that, after my death, my dead body should be handed over to my parental family and all the",

things that were given to me, as a dowry, such as, fridge, T.V., safe box, bed, showcase, sofa-set, gold and silver jewellery, dressing table,",

kitchen set etc., should be given to my parental family, because, I was asked to leave the house and therefore, it would be better that, not a",

single thing of mine remains with the matrimonial home. I wish that bringing up of my daughter Ayushi should be by my husband and he,

should care of her. I took this step because, I was tired. Forgive me and please fulfil my wish.”,

13.5 PW.16 and 17 are the police officials who had investigated the case and filed chargesheet against the respondents-accused. Pursuant to the FIR,

lodged by Kamlesh Parmar “ PW.1, the initial investigation was done by PW.16 and thereafter, it was completed by PW.17. Both the police",

officials during the investigation, recorded the statements of the witnesses, seized and recovered the suicide notes as well as notebook maintained by",

the deceased, obtained the PM Report and sent the recovered suicide notes as well as notebook of the deceased for its examination by Handwriting",

Expert and after receiving the report, the chargesheet came to be filed against the respondents-accused.",

14. Submission on behalf of the appellant “ State and de facto complainant;,”

14.1 Mr. L.B. Dabhi, learned APP appearing for the State and Mr. K.R. Joshi, learned counsel appearing for and on behalf of the complainant",

Kamlesh Parmar made the following submissions;,”

(a) The findings recorded by the trial court are totally perverse and contrary to the evidence on record as the PW.1, PW.5 and PW.6 who are close",

relatives of the deceased have stated in their depositions that, the deceased was subjected to cruelty mentally and physically by the respondents-",

accused as their demand of jewellery and cash amount was not satisfied. The deceased had a girl child and the accused expected a male child and,

that is why she was mentally tortured by the accused. The deceased had done her graduation and no mother would take a step to end her life leaving,

behind her the minor daughter and therefore, the facts of cruelty proved by the prosecution having not been properly appreciated by learned trial court.",

(b) The marriage having been took place on 09.12.2004 and the deceased ended her life on 30.06.2011. Thus, within a span of 7 years, she committed",

suicide and as per the evidence, she was subjected to cruelty and harassment by the husband and his relatives and the said harassment was in",

connection with the demand of dowry as defined under the Dowry Prohibition Act. It is obligatory on the part of the trial court to raise the,

presumption under Section 113B of the Evidence Act that, the accused caused the dowry death and before the deceased could commit suicide, she",

had called PW.5 and informed him that, she was harassed by the accused in connection with the demand of dowry and therefore, the facts of cruelty",

meted out to the deceased soon before her death was proved and established. The learned trial court misread the evidence and recorded that, the",

ingredients of Section 304B of the IPC are not attracted as the death is not occurred within 7 years of the marriage and the prosecution failed to prove,

the facts of demand of dowry. On this count, the findings of acquittal under Section 304B of the IPC seems to be perverse and the view taken by the",

trial court is not sustainable in the eye of law.,

(c) The deceased Vaishali, after the marriage, was residing in a joint family. The learned trial court acquitted the accused no.2 to 5 of the charges",

under Section 498A of the IPC. The deceased before she could commit suicide, had left a suicide note wherein she had voiced her grievance that, she",

was asked to leave the house by the accused. The contents of suicide note would sufficient to prove the guilt of the accused as due to said,

atmosphere and pressure on the part of the deceased to leave the house, she committed suicide leaving behind her a minor child. Thus, there is a",

sufficient evidence to prove the charge of cruelty and harassment as defined under Section 498A of the IPC which has been ignored and disbelieved,

by the trial court.,

(d) Deceased Vaishali committed suicide by jumping in front of moving train. In her suicide note, she had requested the police officer, that, her things", which were given at the time of marriage in the form of dowry be given to her parental house because they asked to leave the house. In the, circumstances, due to continuous harassment, the deceased went into depression and committed suicide and therefore, the accused-respondents", played a vital role directly or indirectly in the act of suicide. The learned trial court did not read the suicide note in its true perspective and despite of, sufficient evidence of abatement as defined under Section 107 of the IPC, the trial court on flimsy ground, acquitted the accused."

15. In the circumstances as referred above, the State counsel as well as Mr. Joshi, learned counsel, prayed that, the prosecution has successfully", proved and established the charges against the respondents-accused beyond reasonable doubt and in that view of the matter, the judgment of acquittal", be set aside and the respondents-accused shall be convicted for the charges enumerated above.,

16. On the other hand, Mr. Hardeep Mahida, learned counsel vehemently opposed the appeals. He would submits that, the conclusion arrived at by the", trial court is possible and probable on the basis of evidence on record and the reasons recorded for acquittal are cogent and convincing and the, findings do not suffer from any perversity or material irregularity and therefore, there is no justifiable reason to interfere with the same. So far as", factual aspects are concerned, he submitted that, the marriage span was 7 years and 4 months and therefore, the presumption as mandated under", Section 113B of the IPC would not be available to the appellants. There is no sufficient evidence to establish the facts of cruelty alleged to have been, committed by the accused. The bald allegations made by the deceased in the so called suicide notes would not amount to cruelty as the allegations, about asking the deceased to leave the house seems to be general and vague allegations. There is no any specific allegation against the in-laws about, the mental and physical harassment and so far as demand of dowry is concerned, the witnesses failed to mention the date, time and incident of", demand of jewellery and cash amount. Thus, therefore, learned trial court after considering the major contradiction in the evidence of the witnesses",

and on appreciation of contents of suicide notes, rightly disbelieved their evidence with respect to cruelty, demand of dowry and the intention of the",
accused for the abatement of suicide.,

17. Mr. Mahida, learned counsel lastly prays that, there being no merits in the appeals filed by the State as well as de facto complainant and same may",
be dismissed.,

18. As stated earlier, these appeals are filed by the State as well as de facto complainant challenging the acquittal of the accused no.2 to 5 for the",

offence punishable under Section 498A of the IPC and the acquittal of the accused no.1 to 5 for the offence punishable under Section 304B, 306 read",

with Section 114 of IPC and Sections 3 and 6 of Dowry Prohibition Act, 1961. Before we proceed to examine the impugned judgment of acquittal of",

the court below and facts of the case, it may be desirable to refer to the settled legal principles of law relating to considering an appeal from an order",

of acquittal. It is settled position of law that, an appeal against the acquittal, the court would not ordinarily interfere with the trial court's conclusion",

unless there are compelling reasons to do so, inter alia, on account of manifest errors of law or facts resulting into miscarriage of justice. It will not",

interfere with an order of acquittal lightly or merely because of another view is possible. This is because of the fact that, in case of an acquittal, there",

is double presumption in favour of the accused which are the presumptions of innocence and subsequent reinforcement and strengthening of it by the,

acquittal order passed by the trial court. (Chandrappa vs. State of Karnataka [(2007) 4 SCC 415], Tota Singh vs. State of Punjab [(1987) 2 SCC 529]",

and State of Rajasthan vs. Mohan Lal [JT (2009) 5 SC 587].,

19. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire,

evidence on record and also perused the judgment under challenge.,

20. It is not in dispute that, marriage of deceased Vaishali was having solemnized with the respondent-accused no.1 husband on 09.12.2004 and out of",

the said wedlock, the baby girl named "Avisha" was born. After marriage, she went to her matrimonial home where she resided in a joint family.",

The respondent nos. 2 to 5 are the father-in-law, mother-in-law, brother-in-law and sister-in-law. In 2007, the father of the deceased had passed",

away. The deceased-wife Vaishali on 30.06.2011, ended her life by jumping in front of moving train. She wrote a short note in her own handwriting,"
inter alia, stating that, after her death, the things which were given in dowry, should be given to her parental family because she had been asked to",
leave the house. She was desirous that, her daughter would be taken care by the accused-husband. So far as suicide is concerned, it was stated in the",
suicide note that, she got tired and that is why she is committing suicide. In the suicide note, Exh.24 and 26, not a single allegation being made against",
the husband and in-laws that, she had been subjected to cruelty by them mentally and physically. In the suicide note, the deceased did not have",
disclosed that, after death of her father, the respondents-accused used to ask her to bring cash as well as gold jewellery from her parental house. The",
deceased in her suicide note, have did not clearly stated about her decision to end her life."

21. In the facts of the present case, on the next day of the suicide, the brother of the deceased PW.1, lodged an FIR Exh.15, inter alia, alleging that,"

the deceased was harassed by the accused for demand of dowry and after the death of her father, they could not fulfill the demand because of",

financial constraints. In the complaint, it is alleged that the deceased whenever she came to parental home, she used to share the harassment meted",

out to her. In the deposition, the PW.1, PW.5 and PW.6 made improvement and exaggeration, inter alia, stating that, the accused were not happy with",

the birth of girl child and they demanded the cash amount to built up the house and tortured the deceased that, either you bring cash or leave the",

house. In the deposition of the investigating officer, the said contradictions and/or improvement are being proved by the defense. We are conscious",

about the settled legal position that, every small discrepancy or minor contradiction in the statement of witnesses cannot be treated as fatal to the case",

of prosecution or discard the testimony of the witnesses. However, in the facts of present case, the version given by the witnesses in the court is",

different from that in the statement made before the police and same cannot be treated as minor contradiction. The witnesses in their depositions,"

admitted that, whatever things given to the deceased at the time of marriage, were not given towards dowry. Upon careful reading of evidence of the",

witnesses, it emerges that, since 2005 to 2011, neither the PW.1, nor, anyone from the family of the deceased including the deceased-wife lodged an",

FIR for the act of harassment. Even attempt was not made through community leaders or anyone to resolve the dispute. As earlier stated, the",

deceased in her suicide note, did not have alleged against the accused about the act of cruelty, demand of dowry and intention on their part in abetting",

her act of suicide.,

22. In view of the aforesaid admitted facts and evidence on record as discussed above, the issue is whether the prosecution proves that the deceased",

subjected to cruelty within the meaning of provisions of Section 498A? In the facts of present case, merely a bald statement made by the deceased",

that, her household items to be handed over to the parental house because she was asked to leave the house would not enough to constitute the act of",

cruelty because it is to be proved that, the harassment meted out to the deceased either with the intention to cause grave injury to her, or to drive her",

to commit suicide, or with intention to coercing her or her relatives to meet unlawful demands. The contradictions as discussed in the presiding",

paragraphs of this judgment would directly affect the case of the prosecution as well as the reliability and acceptability of the testimony of the,

witnesses. Thus, in our opinion, there is no sufficient evidence to believe that, the deceased was harassed in respect of demand of additional dowry or",

was intentionally asked by the accused to leave the house. It is to be noted that, there was no dispute that she was driven out from her matrimonial",

home by the accused. The daughter of the deceased is with the respondent-accused husband and as per the wish of the deceased, the things which",

were given at the time of marriage, already been handed over to the complainant party. The allegations of additional demand of dowry seems to be",

afterthought as if the deceased was asked to bring a dowry, then, she would have disclosed in her suicide note. The witnesses have not stated that, on",

which date, and in whose presence, the demand of cash as well as jewellery being made by the accused. Thus, the ingredients of Section 498A are",

not made out.,

23. The second contention relates to charge of Section 304B of the IPC. The accused as well as his family members have been acquitted of the,

charges of dowry death. In order to attract application of Section 304B of the IPC, the following essential ingredients are to be proved and established:",

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance;,,

(ii) such death should have been occurred within 7 years of her marriage;,,

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of the husband in connection with the demand of dowry and,

such cruelty is shown to have been meted out to the woman soon before her death.,

On proof of essential ingredients mentioned above, it becomes obligatory on the court to raise a presumption that, the accused caused the dowry",

death. The aforesaid statutory provisions shows that there must be material to show that soon before her death, the victim was subjected to cruelty or",

harassment.,

24. In light of the statutory provision and its interpretation, the issue arise as to whether there is evidence to prove that, soon before the occurrence,",

deceased Vaishali was subjected to torture and harassment in connection with the demand of dowry? In our opinion, the marriage span was 7 years",

and 4 months and one of the condition that, death should have occurred within 7 years of the marriage, is not fulfilled. In addition to that, the demand",

of dowry as discussed in the earlier paragraph of this judgment, is not proved and established. Upon careful examination of evidence, the things which",

were given to the deceased at the time of marriage voluntarily and therefore, the additional demand of cash and jewellery as stated by the witnesses,",

considering their contradictions and improvements in the depositions, do not inspire confidence of this Court to hold that, the accused demanded the",

dowry as defined under the provisions of Dowry Prohibition Act. The last call made by the deceased to her brother would not specify the nature of,

demand of dowry. Even the deceased in her suicide note, did not have stated about the demand of dowry allegedly made by the accused. In the",

circumstances, we are of the considered opinion that, the death of the deceased had not taken place within a period of 7 years and there is no",

evidence that, she was subjected to cruelty soon before her death in respect of demand of dowry and therefore, the question does not arise for raising",

presumption in terms of Section 113B of the Indian Evidence Act, nor, it could be concluded that, the respondents-accused are guilty of the",

commission of the offence under Section 304B of the IPC.,

25. The third contention relates to charge of abatement to suicide. Section 306 of the IPC provides for punishment for the offence of abetment of,

suicide. It has to be read with Section 107 of the IPC which defines the act of "abatement". In order to prove the charge under Section 306, the",

prosecution must establish that, the accused contributed to the act of suicide by the deceased. The contribution of the accused in the form of",

instigation, or encourage the person who commit suicide or conspiring with others to ensure that, he or she should commit the suicide. The Supreme",

Court in its various judgments held and observed that, for a conviction under Section 306, the presence of clear mens rea - the intention to abet the act",

" on the part of the accused is essential. Mere a harassment, by itself is not sufficient to find an accused guilty for abetting a suicide. The",

prosecution must demonstrate an active or direct action by the accused that led the deceased to take his or her own life. The element of mens rea,

cannot be simply be presumed or inferred; it must be evident and explicitly discernible (S.S. Chheena vs. Vijay Kumar Mahajan 2010 12 SCC 190),

and Udesingh vs. State of Haryana (2019) 17 SCC 301).,

26. On careful and close consideration of the facts and material on record, in the present case and in light of the law laid down by the Supreme Court",

the contents of suicide note Exh.24 and 26 would not indicative of the fact that, the respondents-accused created such atmosphere that, the deceased",

had no option but to commit suicide. The allegations made against the accused that, deceased was asked to leave the house would not enough to come",

to a conclusion that, the accused purposefully asked the deceased to leave the house. Therefore, the ingredients of suicide note accepted in its",

entirety, would not fall under the definition of abatement as defined under Section 107 of the IPC. It is no doubt true that there was a matrimonial",

dispute and since the birth of the daughter, there was a matrimonial issue. The evidence and record shows that, neither the deceased, nor, her close",

relatives disclosed the true facts of the matrimonial dispute and it was unfortunate that the deceased committed suicide leaving behind her the minor,

daughter. The remarks of leaving house i.e. likely to cause harassment would in ordinary course of things will not come within the purview of,

instigation, but, there has to be positive action that creates a situation for the deceased to put an end to life and there is no evidence to show that",

situation which led the deceased to commit the suicide. In nutshell, we are of the clear opinion that, there is no question of there being any material",

under Section 306 of the IPC either in the evidence of the witnesses, or in suicide note Exh.24 and 26. Thus, therefore, the prosecution failed to",

adduce sufficient evidence to bring home the guilt of the accused of the charge under Section 306 of the IPC.,

27. The upshot of the aforesaid discussion on the evidence is that, the learned trial court has properly appreciated the evidence on record and in",

absence of any compelling reasons, there is no substance in the submission that the findings are perverse, palpably wrong.",

28. As a necessary corollary of the above discussions, this Court find itself in agreement with the conclusion and findings arrived at by the trial court",

that, the accused no.2 to 5 are not guilty of committing the offence under Section 498A read with Section 114 of the IPC and accused no.1 to 5 are",

not guilty of committing the offence under Section 304B, 306 read with Section 114 of the IPC and Sections 3 and 6 of Dowry Prohibition Act, 1961.",

Accordingly, we find that, both the appeals lacks merits and same are to be dismissed and hereby dismissed.",