

State of Gujarat Versus Vs Vanrajsinh Shivaji Chauhan

Court: Gujarat High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 207, 313, 378(1)(3)
Indian Penal Code, 1860 " Section 107, 306, 309, 323, 498A

Hon'ble Judges: S.V. Pinto, J

Bench: Single Bench

Advocate: Jirga Jhaveri, S K Patel

Final Decision: Dismissed

Judgement

S.V. Pinto, J

1. This appeal has been filed by the appellant " State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as

"the Code") against the judgment and the order dated 14.07.2008 in Sessions Case No.167 of 2007 passed by the learned Additional Sessions

Judge and 3rd Fast Track Court, Modasa (Sabalpur) (hereinafter referred to as "the learned Trial Court"), whereby, the learned Trial Court has

acquitted the respondent " accused from the offences punishable under Sections 498-A, 306 and 323 of the Indian Penal Code (hereinafter referred

to as "the IPC"). The respondent is hereinafter referred to as "the accused" as he stood in the original case, for the sake of convenience,

clarity and brevity.

2. The relevant facts leading to filing of the present appeal are as under:

2.1. That deceased Manjula was married to the accused about seven years ago, and two children i.e. son Ajay aged five years and daughter Kinjal

aged 3½ years were born out of the wedlock and they all were residing at village Bhilkuwa, Taluka Modasa. Two years prior to the incident, the

accused started ill-treating Manjula and on 06.06.2007 at around 10:30am, Manjula jumped into the well with her two children, and she and son Ajay

aged five years died due to drowning. A complaint was filed by Deepaji Kohyaji Khant on the same day under Sections 498(A), 306, 323 of the IPC,

which was registered at Modasa (Rural) Police Station at I-C.R. No.68 of 2007.

2.2 The Investigating Officer sent the dead bodies for postmortem after the inquest panchnama was drawn, drew the necessary panchnamas,

recorded the statements of the connected witnesses seized the necessary muddamal and after the FSL reports and the postmortem note were

received, a chargesheet came to be filed before the Court of the learned Judicial Magistrate First Class, Modasa.

2.3. The accused was duly served with the summons and the accused appeared before the learned Trial Court and it was verified whether the copies

of all the police papers were provided to the accused as per the provisions of Section 207 of the Code and a charge was framed by the learned Trial

Court at Exh.4 and the statement of the accused was recorded, wherein, the accused denied all the contents of the charge and the entire evidence of

the prosecution was taken on record. The prosecution has examined 9 witnesses and has produced 27 documentary evidences in support of the case.

2.4. After the closing pursis was submitted by the learned APP at 47, the further statement of the accused under Section 313 of the Code, wherein,

the accused stated that he had gone for the funeral of one Sudhaben, who had expired in the village, and when he returned, Manjula told him that she

wanted to go to her parental house. He told her that they would go on the next day, and thereafter, received news that Manjula had gone with the

children towards the well, and he immediately rushed to the well. That she jumped with her children into the well and he too jumped into the well to

save them. That other persons from nearby also gathered and he could save his daughter Kinjal from drowning, but Manjula and son Ajay could not be

saved. The accused refused to step into the witness box or examine the witnesses on his behalf and after the arguments of the learned APP and

learned advocate for the accused were heard, the learned Trial Court was pleased to acquit the accused from all the offences.

3. Being aggrieved and dissatisfied with the impugned judgment and order passed by the learned Trial Court, the appellant "State has filed the

present appeal mainly stating that the prosecution has examined 9 witnesses and has produced 27 documentary evidences on record in support the

case, but the learned Trial Court has not properly appreciated the evidence in proper perspective. The learned Trial Court has not considered the

various decisions of the Apex Court and has not properly appreciated the ratio laid down by those judgments and also whether the same are applicable

to the facts and circumstances of the case and therefore, the impugned judgment and order passed by the learned Trial Court is perverse and suffers

from legal and factual errors apparent on the record of the case. The learned Trial Court has erred in holding that the prosecution has failed to prove

the case beyond reasonable doubt as during the period of marriage life, the accused has caused the deceased mental and physical harassment, which

has led the deceased to commit suicide. The learned Trial Court has also erred in holding that the prosecution has failed to prove the case beyond

reasonable doubt as due to harassment caused by the accused, the deceased along with her two children Ajay and Kinjal jumped in the well and the

deceased and her son Ajay were expired. The learned Trial Court has not properly appreciated the evidence produced by the complainant and

discarded and disbelieved the evidence while coming to the conclusion, which has resulted into serious miscarriage of justice. Even though, the

witnesses have turned hostile, the learned Trial Court ought to have exercised the powers vested under the provisions of law to find out the truth to do

proper justice and hence, the impugned judgment and order deserves to be quashed and set aside.

4. Heard learned APP Ms. Jirga Jhaveri for the appellant "State and learned advocate Mr.S.K.Patel for the respondent No.1 "accused.

Perused the impugned judgment and order of acquittal and have re-appreciated the entire evidence of the prosecution on record of the case.

5. Learned APP Ms.Jirga Jhaveri for the appellant "State has taken this Court through the entire evidence produced by the prosecution and has

vehemently argued that the learned Trial Court has not appreciated the evidence properly and the prosecution has produced cogent evidence to prove

the the case and has successfully proved the case against the accused but the learned Trial Court has not considered the same and has acquitted the

accused. Learned APP has urged this Court to quash and set aside the impugned judgment and order of acquittal and to find the accused guilty for the

said offence and to allow the present appeal and impose maximum sentence on the accused.

6. Learned advocate Mr.S.K.Patel for the respondent No.1 has submitted that the learned Trial Court has appreciated all the evidence in true

perspective and has not committed any error in acquitting the accused. Therefore, no interference of this Court is required in the impugned judgement

and the order of acquittal passed by the learned Trial Court and has urged this Court to reject the appeal.

7. At the outset, before discussing the facts of the present case, it would be appropriate to refer to the observations of the Apex Court in the case of

Chandrappa & Ors. Vs. State of Karnataka reported in 2007 (4) SCC 415, the Apex Court has observed as under:

Recently, in Kallu Vs. State of M.P. (2006) 10 SCC 313 : AIR 2006 SC 831, this Court stated; ""While deciding an appeal against acquittal,

the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the

power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an

appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not

reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a

presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to

interfere, it should assign reasons for differing with the decision of the trial court". (emphasis supplied)

From the above decisions, in our considered view, the following general principles regarding powers of 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 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

phrases 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.

(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.

7.1 The Apex Court in yet another recent decision in case of Sri Dattatraya Vs. Sharanappa arising out of Criminal Appeal No. 3257 of 2024 (@ SLP

(Crl.) No. 13179 of 2023) observed as under:

31. The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it would be cogent

to delve into an analysis of the principles underlining the exercise of power to adjudicate a challenge against acquittal bolstered by

concurrent findings. The following broad principles can be culled out after a comprehensive analysis of judicial pronouncements:

i) Criminal jurisprudence emphasises on the fundamental essence of liberty and presumption of innocence unless proven guilty. This

presumption gets emboldened by virtue of concurrent findings of acquittal. Therefore, this court must be extracautious while dealing with a

challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome. Consequently, the

onus on the prosecution side becomes more burdensome pursuant to the said double presumption.

ii) In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty

enshrined in Article 21 of the Constitution of India 1950, unless perversity is blatantly forthcoming and there are compelling reasons.

iii) Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However,

where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there

has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an

oppugnant view. [Vide State of Uttar Pradesh v. Dan Singh]

iv) To adjudge whether the concurrent findings of acquittal are perverse, it is to be seen whether there has been failure of justice.

This Court in Babu v. State of Kerala clarified the ambit of the term 'perversity' as

"if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/admissible

material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies

logic as to suffer from the vice of irrationality.

v) In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in

framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced

by the accused in rebutting a legal presumption. [Vide Rajesh Jain v. Ajay Singh]

vi) Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or

fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the

principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated

adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Say in cases where the court severed the

connection between accused and criminality committed by him upon a cursory examination of evidences. [Vide State of Punjab v. Gurpreet

Singh and Others and Rajesh Prasad v. State of Bihar.]

8. It is a settled principle of law that in an appeal against acquittal, the Appellate Court is circumscribed by limitation that no interference has to be

made in the order of acquittal unless after appreciation of the evidence produced before the learned Trial Court, it appears that there are some

manifest illegality of perversity which could not have been possibly arrived at by the Court. It is also a settled principle that there is no embargo on the

Appellate Court to review the evidence but, generally the order of acquittal shall not be interfered with as the presumption of innocence of the

accused is further strengthened by the order of acquittal. The golden thread which runs through the web of administration of justice in criminal cases

is that if two views are possible on the evidence adduced in the case of the prosecution i.e. (i) guilt of the accused and (ii) his innocence, the view,

which is in favour of the accused, should be adopted, and if the trial Court has taken the view in favour of the accused, the Appellate Court should not

disturb the findings of the acquittal. The Appellate Court can interfere with the judgment and order of acquittal only when there are compelling and

substantial reasons and the order is clearly unreasonable and where the Appellate Court comes to conclusion that based on the evidence, the

conviction is a must.

9. The accused has been charged with the offence under Section 306 of the IPC and at this juncture it would be fit to reproduce the observations of

the Apex Court in the case of Prakash and others versus State of Maharashtra in the order passed in Criminal Appeal No.5543 of 2024 (Arising out

of SLP (Cri.) No. 1073 of 2023 on 20 December 2024 in paras 12 to 22 which are as under:

“12. The relevant provisions of the IPC that fall for consideration are as under:

“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.

107. Abetment of a thing“ A person abets the doing of a thing, who“

First.“ Instigates any person to do that thing; or

Secondly.“ 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

Thirdly.“ Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation-1: A person who, by willful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose,

voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2: Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that

act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

13. Section 306 of the IPC has two basic ingredients -first, an act of suicide by one person and second, the abetment to the said act by

another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has

contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three

conditions outlined in Section 107 of the IPC has to be satisfied.

14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the

offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the

accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear

mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit

suicide.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or

intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would

require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the

accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also

requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit

suicide.

16. This Court in the case of S.S. Chheena v. Vijay Kumar Mahajan and Another¹², had an occasion to consider the scope of Section 306

of the IPC and the ingredients which are essential for abetment, as set out in Section 107 of the IPC. It observed as follows:

16. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no

explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person

committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

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18. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to

suicide is an offence under Section 309 IPC.

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21. The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh V. State of M.P. [1995 Supp

(3) SCC 731 : 1995 SCC (Cri) 1157] In Mahendra Singh [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the allegations levelled were as

under: (SCC p. 731, para 1)

आप,आप. आप,आप. आप,आप. My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My

husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being

harassed I want to die by burning. आप,आप. The Court on the aforementioned allegations came to a definite conclusion that by no stretch the

ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under

Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

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23. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that: (SCC p.90, para 17)

आप,आप. आप,आप. आप,आप. The court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the

trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it

[appears] to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and 12 differences in domestic life

quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a

similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a

finding that the accused charged of abetting the offence of suicide should be found guilty. आप,आप.

24. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion

to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words आप,आप. "instigation आप,आप. and आप,आप. "goading आप,आप. The

Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability

pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any

straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on

the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the

ratio of the cases decided by this Court is clear that in order to convict a person under Section 306IPC there has to be a clear mens rea to

commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must

have been intended to push the deceased into such a position that he committed suicide.

17. This Court held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing.

Therefore, without a positive act on the part of the accused to instigate or aid a person in committing suicide, conviction cannot be

sustained. This Court further observed that the intention of the legislature and the ratio of the cases decided by this Court is clear that in

order to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit the offence. Abetment also requires an

active act or direct act which led the deceased to commit suicide seeing no other option and that act must have been intended to push the

deceased into such a position that he committed suicide. However, this Court has cautioned that since each person reacts differently to the

same provocation depending on a variety of factors, it is impossible to lay down a straightjacket formula to deal with such cases. Therefore,

every such case has to be decided on the basis of its own facts and circumstances.

18. More recently, in the case of Jayedeevsinh Pravinsinh Chavda and Others v. State of Gujarat, this Court has relied on S.S. Chheena

(supra) to hold that the element of mens rea cannot simply be presumed or inferred, instead it must be evident and explicitly discernible.

Without this, the foundational requirement for establishing abetment under the law, that is deliberate and conspicuous intention to provoke

or contribute to the act of suicide, would remain unfulfilled. This Court observed as follows:

“18. For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of clear mens rea is the

intention to abet the act¹⁹ is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The

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

rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for

establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or

contribute to the act of suicide.²⁰

19. It is, therefore, evident that the positive act of instigation is a crucial element of abetment. While dealing with an issue of a similar

nature, this Court in the case of Ramesh Kumar v. State of Chhattisgarh laid down the parameters of what would be constituted to be an act

of instigation. This Court observed as follows:-

²⁰ Instigation is to goad, urge forward, provoke, incite or encourage to do an act²¹. 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. The present one is

not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased

was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger

or emotion without intending the consequences to actually follow cannot be said to be instigation.²²

20. It could thus be seen that this Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do an act²³.

It has been held that in order 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, however, a reasonable certainty to incite

the consequence must be capable of being spelt out. Applying the law to the facts of the case, this Court went on to hold that a word uttered

in the fit of anger or 16 emotion without intending the consequences to actually follow cannot be said to be instigation.

21. Relying on the decision in the case of Ramesh Kumar (supra), this Court in the case of Ude Singh and Others v. State of Haryana

observed as follows:

¹⁶ In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide.

It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a

vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for

abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In

the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the

part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of

occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and

circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is

guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation

means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and

the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be

safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of

conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four

corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually

draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the

accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of

such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the

offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased

reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human

behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the

actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of

another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's

reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard

to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or

urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety

of factors, including those of background, self-confidence and upbringing. 18 Hence, each case is required to be dealt with on its own

facts and circumstances.

22. It could thus be seen that this Court observed that in cases of alleged abetment of suicide, there must be a proof of direct or indirect

act(s) of incitement to the commission of suicide. It has been held that since the cause of suicide particularly in the context of the offence of

abetment of suicide involves multifaceted and complex attributes of human behaviour, the court would be looking for cogent and convincing

proof of the act(s) of incitement to the commission of suicide. This Court further observed that a mere allegation of harassment of the

deceased by another person would not suffice unless there is such action on the part of the accused which compels the person to commit

suicide. This Court also emphasised that such an offending action ought to be proximate to the time of occurrence. It was further clarified

that the question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the

accused. It was further held that if the acts and deeds are only of such nature where the accused intended nothing more than harassment or

a snap-show of anger, a particular case may fall short of the offence of abetment of suicide, however, if the accused kept on irritating or

annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide.

This Court held that owing to the fact that the human mind could be affected and could react in myriad ways and that similar actions are

dealt with differently by different persons, each case is required to be dealt with its own facts and circumstances.

10. In light of the above settled principles of law the evidence of the prosecution on record is re-appreciated and the prosecution has examined PW1

Deepaji Kohyaji Khant at Exh.9. The witness is the complainant, who has fully supported the contents of the complaint and has stated that the

deceased was married to the accused 6 to 7 years prior to the incident and the accused used to consume liquor every day and physically assault the

deceased and tell her to go and die. The deceased used to tell this to him whenever she would come to her parental house and on the day of the

incident, his neighbour received a phone call that Manjula has jumped into the well along with her children and when they went to the outskirts of

Tintoi village, they saw Manjula and her son Ajay drowned in the well. The police came and he had filed the complaint, which is produced at Exh.10.

During the cross-examination, the witness has stated that when he went to the well, he was informed that the accused had jumped into the well to

save Manjula and the children and their daughter Kinjal was saved. The mother-in-law of Manjula had taken out her saree and dropped it in the well

so that the accused could swim. Manjula was married eight years prior to the incident. That he has not mentioned in the complaint that the accused

used to consume liquor and Manjula was a very sensitive person and she had never come to her parental house in anger from her matrimonial house.

10.1 The prosecution has examined PW-2 Kaliben Himmatsinh Khant at Exh.11 and the witness is the mother of deceased Manjula and she has fully

supported the case of the prosecution. During the cross-examination, the witness has stated that Manjula had never come to her parental house in

anger and the accused had saved their daughter Kinjal by jumping in the well. That daughter Kinjal was living with the accused.

10.2 The prosecution has examined PW-3 Ashwinkumar Hemtaji Khant at Exh.17 and the witness is the brother of the deceased, who has stated that

his sister Manjula was married to the accused 7 to 8 years ago and prior to her death, she had come to her parental house during the wedding

ceremony of Aruna along with her husband and two children. Manjula had told them that her husband was physically assaulting her and they had

consoled her and sent her back to her matrimonial house, and thereafter, she had committed suicide by jumping in the well with her children. During

the cross-examination by the learned advocate for the accused, the witness has stated that his sister used to come for occasions and festivals to his

house.

10.3 The prosecution has examined PW-4 Vanaba Deepaji Khant at Exh.18 and the witness is the aunt of the deceased, who has fully supported the

case of the prosecution.

10.4 The prosecution has examined PW-5 Dr. Kalpit Shivubhai Sharma examined at Exh.20 and the witness is the medical officer, who has conducted

the post-mortem on the dead bodies of deceased Manjula and deceased Ajay and has produced the postmortem notes at Exh.22 and 23 respectively.

In both the post-mortem notes, no injuries were found as per Column No.17 on the dead bodies of both the deceased and the cause of death was

asphyxia due to drowning.

10.5 The prosecution has examined PW-6 Arvindbhai Narshibhai Patel at Exh.27 and the witness has stated that on 06.06.2007 he was at his home,

and at that time, one old lady from village Bhilkuwa came to tell him to bring a rope as her daughter-in-law had fallen in the well and he took the rope

and ran to the well where he found one man swimming in the water with a girl. The witness has identified the man as the accused before the learned

Trial Court. Thereafter, he and the others including Laljibhai and Jitendrabhai threw the rope in the well and the man was brought out from the well

with the girl. The dead body of one lady and another dead body were in the well which had about 15 feet of water.

10.6 The prosecution has examined PW7 Bhikhumiya Alimiya Sumra at Exg.29 and the witness is the PSO, who had registered the complaint at

Modasa Rural Police Station I-C.R. No.68 of 2007 under Sections 498(A), 306 and 323 of the IPC and after the clothes from the dead bodies were

brought by Unarmed Head Constable Jaswantsinh, a panchnama in the presence of two independent panchnama witnesses was prepared and the

clothes of the deceased were seized during investigation. The investigation was handed over to PSI Desai.

10.7 The prosecution has examined PW8 Kalubhai Harjibhai Desai at Exh.32 and the witness is the Investigating Officer, who has narrated all the

procedure that was undertaken by him during investigation of the offence. During the cross-examination, the witness has stated that in the complaint,

there was no clear reason for the mental and physical cruelty given to the deceased and during investigation, it was not found that the accused used to

consume liquor. That he had investigated what had happened on the day of the incident at the house of the accused and it was not found that the

mother-in-law of the deceased had uttered any words to any of the witnesses on the day of the incident. Moreover, none of the witnesses have stated

that the deceased and the accused had any fight on the day of the incident. During investigation, it was also found that accused had jumped into the

well and saved his daughter.

11. On appreciation of the entire evidence of the prosecution in light of the decisions of the Apex Court in the Prakash (supra) it is an admitted fact

that the complainant and the deceased were married eight years prior to the incident and there is no evidence that the complainant and the deceased

had any verbal altercation or physical fight on the date of the incident. The evidence that has emerged in the deposition of witnesses, who are the

brothers and the mother of the deceased, is that the deceased had never, during her matrimonial life, come to the parental home after being angry or

upset at her matrimonial home. The prosecution has proved that the deceased Manjula jumped into the well with her two children, Ajay and Kinjal, but

it is also proved that the accused had also jumped into the well to save them and saved the daughter Kinjal but, he could not save Manjula and son

Ajay. The learned Trial Court has discussed the ingredients of abetment of suicide and has observed that there was no evidence that the accused used

to consume liquor or that there was any mental or physical harassment meted out to the deceased by the accused and there was no evidence that the

accused had in fact immediately prior to the unfortunate incident committed any act, which would amount to abetment of suicide and hence has

passed the impugned judgment and order of acquittal.

12. In view of the above, the learned Trial Court has appreciated the entire evidence in proper perspective and there does not appear to be any

infirmity and illegality in the impugned judgment and order of acquittal. The learned Trial Court has appreciated all the evidence and this Court is of the

considered opinion that the learned Trial Court was completely justified in acquitting the accused of the charges leveled against them. The findings

recorded by the learned Trial Court are absolutely just and proper and no illegality or infirmity has been committed by the learned trial Court and this

Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the learned Trial Court. This

Court finds no reason to interfere with the impugned judgment and order and the present appeal is devoid of merits and resultantly, the same is

dismissed.

13. The impugned judgment and order dated 14.07.2008 in Sessions Case No.167 of 2007 passed by the learned Additional Sessions Judge and 3rd

Fast Track Court, Modasa (Sabalpur) is hereby confirmed.

14. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.