State of Gujarat Versus Vs Rakesh Mansukhbhai Makadiya & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 107, 207, 209, 313, 378(1)(3)
Indian Penal Code, 1860 â€" Section 114, 302, 306, 498A
Dowry Prohibition Act, 1961 â€" Section 3, 7

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

Bench: Single Bench

Advocate: Bhargav Pandya, KB Anandjiwala

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 against the judgement and order

of acquittal passed by the learned Presiding Officer, 3rd Fast Track Court, Gondal Camp at Upleta (hereinafter referred to as ""the learned Trial

Court"") in Sessions Case No. 174/2007 on 29.11.2007, whereby, the learned Trial Court has extended the benefit of doubt and acquitted the

respondents for the offence punishable under Sections 306, 498A and 114 of Indian Penal Code, 1860 (hereafter referred to as ""IPC"" for short) and

Section 7 of The Dowry Prohibition Act, 1961 (hereafter referred to as ""Dowry Act"" for short).

1.1 Learned advocate Mr. K.B. Anandjiwala for the respondents submits that the respondent no. 2 Ã¢â‚¬" Mansukhbhai Bavanjibhai Makadia has

expired on 12.06.2015 and submitted the copy of the death certificate issued by the Department of Health (Birth & Death), Rajkot Municipal

Corporation which is taken on record. The certificate shows that the respondent no. 2 Ã¢â‚¬" Mansukhbhai Bavanjibhai Makadia has expired on

12.06.2015 and the death has been registered with Rajkot Municipal Corporation, Department of Health (Birth & Death) on 15.06.2015. In view of

the above, the case against the respondent no. 2 stands abated.

1.2 The respondents are hereinafter referred to as the accused in the rank and file as they stood in the original case for the sake of convenience,

clarity and brevity.

2. The brief facts that emerge from the record of the case are as under:

2. 1 That the accused no. 1 - Rakesh Mansukhbhai Makadia was the husband of deceased Shilpaben, accused no. 2 was the father-in-law of

Shilpaben, accused no. 3 was the mother-in-law and accused no. 4 was the sister-in-law of deceased Shilpaben who had married the accused no. 1

before 09.09.2007. That all the accused were illtreating the deceased Shilpaben for dowry and they used to taunt and mentally harass her to bring

dowry from her parental house. On 09.09.2007 at around 10:30 hours, deceased Shilpaben took her 1Ã‚Â½ year old son Siddh in her lap and sprinkled

kerosene on herself and set herself and her son Siddh ablaze and she committed suicide due to the mental and physical harassment of the accused and

a complaint was filed by Gajendrakumar Maganbhai Makhansa - the brother of deceased Shilpaben before the Dy.S.P Jetpur which was registered at

Bhayavadar Police Station 1 Ã¢â‚¬" C.R. No. 42/2007 under Sections 498A, 306 and 114 of the IPC and Section 3 and 7 of Prohibition of Dowry Act on

11.09.2007.

2.2 The Investigating Officer recorded the statements of the connected witnesses and seized the necessary documents and after completion of

investigation, a chargesheet came to be filed before the learned Judicial Magistrate First Class, Upleta and as the said offences against the accused

were exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Gondal Camp at Upleta as per the provisions of

Section 209 of the Code of Criminal Procedure and case was registered Sessions Case No. 174/2007.

2.3 The accused were 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 at Exh. 1 was framed against the

accused and the statements of the accused were recorded at Exhs. 2 to 5 respectively, wherein, the accused denied all the contents of the charge and

the entire evidence of the prosecution was taken on record.

2.4 The prosecution produced 14 oral evidences and 17 documentary evidences to bring home the charge against the accused and after the learned

Additional Public Prosecutor filed the closing pursis at Exh. 45, the further statement of the accused under Section 313 of the Code of Criminal

Procedure, 1973 were recorded, wherein, the accused denied all the evidence of the prosecution on record. The accused refused to step into the

witness box or examine witnesses on their behalf and stated that a false case has been filed against them. After the arguments of the learned

Additional Public Prosecutor and the learned advocate for the accused were heard, the learned trial Court by the impugned judgment and order was

pleased to acquit all the accused from all the charges leveled against him.

3. Being aggrieved and dissatisfied with the said judgement and order of acquittal, the appellant - State has filed the present appeal mainly stating that

the impugned judgement and order of acquittal passed by the learned Trial Court is contrary to law and evidence on record and the learned Trial Court

has not appreciated the fact that all the witnesses have supported the case of the prosecution and during cross-examination, nothing adverse has been

elicited in favour of the respondent. The case has been proved beyond reasonable doubts and the prosecution has successfully established the case

against the respondents and the judgement and order of acquittal is unwarranted, illegal and without any basis in the eyes of law and the reasons

stated while acquitting the respondent are improper, perverse and bad in law. Hence the impugned judgment and order passed by the learned Trial

Court deserves to be quashed and set aside.

4. Heard learned APP Mr. Bhargav Pandya for the appellant State and learned advocate Mr. K.B. Anandjiwala for the respondents. Perused the

impugned judgement and order of acquittal and have reappreciated the entire evidence of the prosecution on record of the case.

5. Learned APP Mr. Bhargav Pandya has taken this Court through the entire evidence of the prosecution on record of the case and has submitted

that the prosecution has examined 14 witnesses and have produced 17 documents to prove the charge against the accused and all the witnesses have

supported the case of the prosecution and it is proved that the deceased committed suicide at the house of the accused along with her minor son Siddh

that learned Trial Court has disbelieved the case of the prosecution mainly on the ground that relatives have not supported the case of the prosecution

but the learned Trial Court has not used his power to put questions to the witnesses during the chief examination, cross-examination or re-examination

and the learned Trial Court has not ascertained whether the witnesses were in fact, speaking the truth before the learned Trial Court. The learned

Trial Court has failed to appreciate that accused have not explained how the incident has occurred and there was sufficient material on the record of

the case to prove that the deceased had committed suicide because of the mental and physical torture caused to her by the in-laws regarding their

demand for dowry. Learned APP has urged this Court that the impugned judgement and order is improper, perverse and bad in law and is required to

be quashed and set aside.

6. Learned advocate Mr. K.B. Anandjiwala for the respondent has submitted that in the entire evidence of the prosecution, there is no iota of

evidence that the accused had committed any act which would amount to harassment to the deceased and the evidence on record suggests that the

deceased had gone home for the festival of Satam - Atham and at that time, there was no complaint about any ill-treatment to her. The brother of the

deceased has also stated that she used to happily come from her matrimonial house and there is no specific evidence as to when was the physical ill-

treatment given to the deceased. The accused no. 4 is the sister-in-law who is residing at her matrimonial house and there is no evidence that she was

illtreating the deceased in any manner but she has been falsely roped in the offence merely on suspicion. If the evidence is perused, there is evidence

that the marriage span was more than seven years and vague statement of demand of dowry have been stated by the witnesses. As far as the amount

of â‚¹25,000/- is concerned, the witness has stated that the amount was given to Gajendrabhai - the brother of the deceased and there is nothing on

record to show that the amount was given to the accused. As per the settled principle of law, the prosecution is required to prove that there was some

direct or indirect act of incitement to the deceased to commit suicide and it is on the prosecution to prove that there was some instigation or

provocation on the part of the accused along with the mens rea that the deceased should commit suicide. In the absence of any evidence to this effect,

the accused cannot be convicted for the offence under section 306 of the IPC. The learned Trial Court has appreciated all the evidences and passed

the judgement and order of acquittal which is just and proper and no interference is required in the same and learned Advocate for the respondents

has urged this court to reject the appeal of the appellant.

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, wherein, the Apex Court has observed as under:

Recently, in Kallu Vs. State of M.P. (2006) 10 SCC 313, 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"".

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, reappreciate 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.

(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 Ã¢â‚¬Ëœperverseâ€™ 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 Ã¢â‚¬Ëœperversityâ€™ as

Ã¢â‚¬Å“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 Ã¢â‚¬Ëœagainst the weight of evidenceâ€™, or if the finding so outrageously defies

logic as to suffer from the vice of irrationality.Ã¢â‚¬â€‹

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. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and

it has finally culminated when a case ends in an acquittal. That the learned Trial Court has appreciated all the evidence and when the learned Trial

Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the

accused gets strengthened. That there is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken

by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.

9. With regard to Section 306 of the IPC it would be fit to reproduce the observations of the Apex Court in the case of Prakash and Ors. Vs. State of

Maharashtra in the order passed in Criminal Appeal No. 5543 of 2024 (Arising out of SLP (Cri.) No. 1073 of 2023) decided on 20.12.2024 in paras 12

to 22 which are as under:

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

Ã¢â‚¬Å“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 thingÃ¢â‚¬"A person abets the doing of a thing, whoÃ¢â‚¬" First.Ã¢â‚¬" Instigates any person to do that thing; or Secondly.Ã¢â‚¬

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.Ã¢â‚¬" Intentionally aids, by any act or illegal omission, the

doing of that thing.

Explanation 1.Ã¢â‚¬" A person who, by willful misrepresentation, or by willful 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.Ã¢â‚¬" 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.Ã¢â‚¬â€‹

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:

Ã¢â‚¬Å“16. The word Ã¢â‚¬Å“suicideÃ¢â‚¬ in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires

no explanation. Ã¢â‚¬Å“SuiÃ¢â‚¬ means Ã¢â‚¬Å“selfÃ¢â‚¬ and Ã¢â‚¬Å“cideÃ¢â‚¬ means Ã¢â‚¬Å“killingÃ¢â‚¬, 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.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦..

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.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦.

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) Ã¢â‚¬Å“1. Ã¢â‚¬Â¦ 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.Ã¢â‚¬ 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.

Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦..

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) Ã¢â‚¬Å“17.

Ã¢â‚¬Â¦ 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 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.Ã¢â‚¬â€‹

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 Ã¢â‚¬Å“instigationÃ¢â‚¬ and Ã¢â‚¬Å“goadingÃ¢â‚¬. 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 306 IPC 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.Ã¢â‚¬â€‹

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 Jayedeepsinh Pravinsinh Chavda and Others v. State of Gujarat13, 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:

Ã¢â‚¬Å“18. For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of clear mens reaÃ¢â‚¬"the

intention to abet the actÃ¢â‚¬"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.Ã¢â‚¬â€‹

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,14 laid down the parameters of what would be constituted to be an

act of instigation. This Court observed as follows:-

Ã¢â‚¬Å“20. Instigation is to goad, urge forward, provoke, incite or encourage to do Ã¢â‚¬Å“an actÃ¢â‚¬. 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.Ã¢â‚¬â€‹

20. It could thus be seen that this Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do Ã¢â‚¬Å“an actÃ¢â‚¬â€‹.

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 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:

Ã¢â‚¬Å“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. Hence, each case is required to be dealt with on its own facts

and circumstances.Ã¢â‚¬â€‹

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 on the above settled principles on law considering the evidence on the prosecution, to bring home the charge against the accused, the

prosecution has examined PW1 - Gajendrabhai Maganbhai at Exh. 10 and the witness is the brother of the deceased Shilpaben and the complainant

who has stated that deceased Shilpaben committed suicide because of the taunts and dowry demands by the accused. That one year prior to the

incident, he had given â‚¹25,000/- to the deceased as the accused had demanded for the amount to start a business at Rajkot and as the financial

condition of the complainant was weak, he had taken the amount from his uncle Rasikbhai and given it to Shilpaben. That his sister had come for the

festival of Satam Ã¢â‚¬" Atham and she had told him about the ill-treatment to her by the accused and thereafter, on 09.09.2007, he was informed that his

sister and nephew were burnt. The complainant has produced the complaint at Exh. 11 and during the cross-examination he has admitted that he had

taken finance from his uncle and an amount of â‚¹90,000/- was taken from his uncle. That the marriage of Shilpaben was through his uncle and his

sister was married for more than seven years. That he does not know whether Shilpaben was taking any treatment from any doctor at Upleta and

whether she had any other illnesses and Shilpaben had never taken treatment for any physical harassment by the accused. The complaint at Exh. 11

bears the handwriting of his uncle Rasikbhai and he had merely signed the complaint

10.1 The prosecution has examined PW2 - Ashokbhai Devrajbhai Makadia at Exh. 12 and the witness is the uncle of the accused and neighbour of

the accused who has stated that he is aware that the accused no. 1 had married the deceased before seven years and the accused no. 2 has 60 vighas

of land at Bhayavadar. That he had never heard that the accused had demanded for any dowry from the deceased and he was visiting the accused

and at that time found that the marital life of Shilpa was happy. That he had never found Shilpa being tortured and he knew that Shilpa had a

miscarriage twice.

10.2 The prosecution has examined PW3 - Madhabhai Somabhai at Exh. 13 and the witness has stated that on 09.09.2007, he had gone to the house

of Ajaybhai Chandubhai with his worker Prakashbhai Hojabhai and one Jethabhai to do the construction work and at that time, he saw smoke coming

from the neighbouring house. That they rushed to the house and broke open the door and found one lady and one child burnt and both of them had

expired. That he called the owner of the house and he does not know why the incident has occurred. During the cross-examination by the learned

advocate for the accused, the witness has stated that at the time of the incident, there was no one present at home and he did not hear the deceased

and the child crying and shouting at the time of the incident.

10.3 The prosecution has examined PW4 Ã¢â‚¬" Ajaybhai Chandubhai Makadia at Exh. 14 and the witness is the neighbour of the accused and he has

stated that he was not present on nine 09.09.2007 but Madhabhai had telephoned him and told him that a woman was burnt in the next house and he

told the accused no. 1 about the same. When he went to the place of incident, he found Shilpaben and her child expired but he does not know the

reason for the incident.

10.4 The prosecution has examined PW5 - Rasikbhai Hansrajbhai Khasodra at Exh. 15 and the witness is the uncle of the deceased who has stated

that the deceased was married to the accused no. 1 about seven years ago and she had come to his place four to five times and told him that she was

being illtreated for dowry. That in the year 2005, he had given â‚¹25,000/- to Gajendra - the brother of the deceased and at the time of the incident, he

was at Pajod when his nephew had informed him that the incident has occurred. During the cross-examination by the learned advocate for the

accused, the witness has stated that he was working as a teacher in the high school and after he came to know about the ill-treatment to Shilpa, he did

not take any steps for the same. That he had given the amount to Gajendra and he had not given the amount to any in-laws of Shilpaben and Shilpaben

had come to his place once or twice and had last visited him three years prior to the incident.

10.5 The prosecution has examined PW6 - Vijayaben Maganbhai at Exh. 20 and the witness is the mother of the deceased who has stated that her

daughter had informed her that she was being beaten but she had not told her who was beating her for and the reason for beating. That she had not

given her daughter anything and her son-in-law Gajendra had never told her that he had given the in-laws of Shilpa anything. The witness has not

supported the case of the prosecution has been declared hostile and has been cross-examined at length by the learned APP. During the cross-

examination by the learned advocate for the accused, the witness has stated that on the festival of Satam Ã¢â‚¬" Atham, two to three days prior to the

incident, all her daughters, sons-in-law and her son Gajendra had celebrated the festival at Dhoraji and Fareni and the festival was celebrated very

peacefully. That on that day, Shilpa had not stated anything about any treatment to her and during her marital life, she had suffered a miscarriage on

two occasions. Her in-laws had also taken her for treatment at Upleta and she had always sent her daughter happily to her marital home. That the

accused are very well of financially and they do not require any financial help.

10.6 The prosecution has examined PW7 - Hansaben Kantilal Vachhani at Exh. 21 and the witness is the neighbour at the parental house of the

deceased. The witness has stated that the deceased Shilpaben had come to her parental house for Satam Ã¢â‚¬" Atham and had stayed for four to five

days and she had stated that she was illtreated but she did not state the reason for the ill-treatment. The witness has not supported the case of the

prosecution and has been declared hostile during the cross-examination by the learned advocate for the accused sshe has stated that she does not

know anything about any ill-treatment given to Shilpaben.

10.7 The prosecution has examined PW8 - Mitaben Rasikbhai at Exh. 22 and the witness is the aunt of the deceased who has fully supported the case

of the prosecution. During the cross-examination, the learned advocate for the accused stated that she had not witnessed any marks of injury on

Shilpaben and during her married life, Shilpaben had suffered a miscarriage on two to three occasions. That after the incident has occurred, there

were talks of compromise between the accused and her husband and she does not know what amount was demanded during the compromise.

10.8 The prosecution has examined PW9 - Vipulbhai Bikkubhai at Exh. 23 and the witness is the cousin brother of the deceased and she has stated

that Shilpa had died due to burns and he had informed his aunt about the same but he does not know the reason for the death of Shilpaben.

10.9 The prosecution has examined PW10 - Vipulbhai Chandubhai at Exh. 24 and the witness has stated that the accused no. 1 called him on

09.09.2007 and told him that the deceased had expired but he does not know the reason for the same till today.

10.10 The prosecution has examined PW11 Ã¢â‚¬" Ajaykumar Rajeshwarprasad at Exh. 25 and the witness is the Medical Officer who had conducted

the postmortem on the dead body of the deceased. The witness has stated that he had conducted the postmortem on 09.09.2007 between 01:30 pm to

03:45 pm and 04:00 pm to 6:30 pm of the dead body of Shilpaben Rajeshbhai Makwana and Siddh Rajeshbhai Makwana along with doctor Dr.

Bhavinbhai Kansagara.

10.11 The prosecution has examined PW12 - Prafulbhai Rasikbhai at Exh. 29 and the witness was working as the Head Constable at Police Station

and he had accepted the bail of the accused no. 4 as she was granted anticipatory bail from this court.

10.12 The prosecution has examined PW13 - Jivaji Khatraji Bodad at Exh. 30 and the witness is the PSO who has registered the offence and sent the

investigation to PSI - Vyas. The witness has also stated that on the same day, an offence under section 302 of the IPC was registered against

Shilpaben Rakeshbhai Mansukhbhai which was registered at I Ã¢â‚¬" C.R. No. 43/2007.

10.13 The prosecution has examined PW14 - Gajendra Shantilal Vyas at Exh. 35 and the witness is the Investigating Officer who has investigated the

offence and has deposed in detail about the procedure that was undertaken by him for investigation. During the cross-examination by the learned

advocate for the accused, the witness has stated that on 09.09.2007, Accidental Death no. 38/2000 was filed and he had investigated the same and

had drawn the panchnama of the place of offence, the inquest panchama and had recorded the statements of some witnesses. There is no evidence

as to where the complaint was given and at what time was the complaint gi ven. As per the statement of Mitaben Rashikbhai, the deceased had

telephoned her that she was being illtreated but no call details were seized and the evidence of the telephone call details was an important evidence.

Mitaben had not stated the telephone numbers of any person. In the papers of Accidental Death No. 38/2007 which is produced at Exh. 36,

Ashokbhai Devrajbhai Makadia had given the information that Shilpaben wife of Rakeshbhai Makadia Patel was unhappy about keeping the child and

she sprinkled kerosene and was burnt and in the short facts, it was stated that while the deceased was preparing food, the minor son - Siddh was

crying and she was unhappy about taking care of him and she kept minor Siddh in her lap, sprinkled kerosene and set herself and the minor child

ablaze.

11. On minute dissection of the entire evidence of the prosecution, the infirmities in the evidence have come on record and there is no iota of evidence

that there was in fact any demand for dowry by any of the accused and there are mere vague statements of the complainant and other family

members that dowry was being demanded by the accused. The complainant - Gajendrabhai Maganbhai has stated that one year prior to the incident,

the accused had demanded an amount of â‚¹25,000/- and he had taken the amount from his uncle PW5 - Rasikbhai Hansrajbhai Kansodra and given the

amount to Shilpaben but there is no evidence that amount was actually given to any of the accused. In fact, in the evidence of PW6 - Vijayaben

Maganbhai - the mother of the deceased, it has come on record that the accused were financially very well off and they would not require an amount

of â‚¹25,000/- for whatsoever reasons. There is no evidence of demand of harassment and torture, and the incident has occurred on 09.09.2007,

whereas, the complaint has been filed on 11.09.2007 and the complaint has been filed in the handwriting of PW5 Ã¢â‚¬" Rasikbhai Hansrajbhai Kansodra

- the uncle of the deceased. There is also evidence in the deposition of PW8 - Mitaben Rasikbhai that after the death of the deceased Shilpaben, talks

of compromise were going on and some amounts were demanded from the accused and the learned Trial Court has observed that the complaint was

developed at the instance of the uncle and they all met together and decided to file the complaint. There is also evidence on record that there were

cordial relations between the deceased and the accused, and immediately prior to the incident they had celebrated the festival of Satam Ã¢â‚¬" Atham

together and the learned Trial Court has concluded that the prosecution has not proved the case beyond reasonable doubts as there was no evidence

of any harassment or ill-treatment to the deceased. Moreover, the accused no. 4 was married much prior to the marriage of the deceased and the

accused no. 1 and there was no evidence of any kind of harassment by her to the deceased or by any of the accused to the deceased.

12. On minute re-appreciation of the entire evidence of the prosecution and the impugned judgment and order, it appears that the learned Trial Court

has thoroughly appreciated all the evidence on record and has given due consideration to all the material pieces of evidence. The learned Trial Court

has discussed all the oral as well as documentary evidences and if the evidence produced by the prosecution is examined in light of the law laid down

Chandrappa (supra), Sri Dattatraya (supra) and Prakash (supra), it appears that the learned Trial Court has arrived at findings which are legal and

proper and there are no errors of law or facts. Moreover, the view taken by the learned Trial Court in acquitting the accused is fairly possible and

there is no illegality and perversity in the impugned judgment and order of acquittal.

13. In view of the settled position of law in the decisions of Prakash (supra), 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.

14. The impugned judgment and order passed by the learned Presiding Officer, 3rd Fast Track Court, Gondal Camp at Upleta in Sessions Case No.

174/2007 on 29.11.2007, is hereby confirmed.

15. In view of the above discussion, there is no merits in Cr.R.A. No. 220/2008 and the same stands dismissed.

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