(2025) 12 GUJ CK 0008

Gujarat High Court

Case No: R/Criminal Appeal No. 177 Of 2010

State Of Gujarat		APPELLANT
	Vs	
Hansaben W/O Sumanbhai Jagabhai Solanki		RESPONDENT

Date of Decision: Dec. 2, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 313, 378, 378(1)(3)
- Indian Penal Code, 1860-Section 306, 323, 498(A)

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Yuvraj Brahmbhatt, JK Parmar

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. The present Appeal is preferred by the Appellant State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the Judgment and Order dated 07.10.2009, passed by the Additional Sessions Judge, Court no.14, Ahmedabad (City) in Sessions Case No.340 of 2007, recording the acquittal of the respondent accused for the offence punishable under Section 498(A), 306 and 323 of the Indian Penal Code, 1860.

2. The brief facts of the prosecution case are as under:

2.1. The brief facts of the case of the prosecution are that on 25.08.2007 at around 02.00 p.m., the accused had reached the house of the deceased Ashaben and quarreled with her and assaulted her and had stated that she does not like her and the deceased had poured kerosene on herself and the accused had abetted the deceased to commit suicide and was rushed to the hospital and was declared dead at 10.45 hours, by way of which the accused had committed offence under Section 306, 498(A), 323 of the Indian Penal Code, 1860 and therefore, the

complaint being I-C.R.No.292/2007 was filed against the accused with Bapunagar Police Station, Ahmedabad for the offence punishable under Sections 306, 498(A) and 323 of the Indian Penal Code, 1860.

2.2. After completion of investigation the police has filed chargesheet before the Judicial Magistrate First Class, Ahmedabad for the offence punishable under Sections 498(A), 306 and 323 of the Indian Penal Code. Then after, the matter was committed to the Sessions Court and case was registered as Sessions Case No. 340/2007.

2.3. The trial was initiated against the respondent and during course of trial the prosecution examined 8 witnesses and 10 documentary evidences. At the end of trial, after recording the statement of the accused under Section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 07.10.2009.

2.4. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant-State has preferred the present appeal.

3. It was contended by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the same and looking at the evidence led under the provisions of law itself, it is established that the prosecution has proved the case. Learned APP has also taken this Court through the oral as well as the entire documentary evidence.

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

5. Per contra, learned advocate for the respondent-accused has submitted that the Trial Court has appreciated all the evidence in its true perspective and has not committed any error in acquitting the accused therefore, no interference of this Court is required in the impugned judgment and the order of the acquittal passed by the Trial Court and has urged this Court to reject this Appeal.

6. Having heard learned APP for the appellant State and learned advocate for the respondent-accused and having gone through the judgment and order of acquittal passed by the

trial Court as well as material placed on record, certain aspects which weighed with this Court needs to be discussed.

6.1. Before adverting to the facts of the case, it would be worthwhile to refer to the scope of interference in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

6.2. Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrive at would not be arrived at by any reasonable person, and therefore, the decision is to be characterized as perverse.

6.3. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. That the duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

6.4. In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C., it is held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (emphasis applied)

6.5. In Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752, the Apex Court has observed that:

"The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court".

6.6. The Apex Court, in case of Chandrappa v. State of Karnataka (2007) 4 SCC 415, reiterated the legal position as under: (SCC p. 432, para 42)

"(1) An appellate court has full power to review, re-appreciate 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 emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4)An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

6.7. The Apex Court has held that the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

6.8. These decisions clearly express that while exercising appellate powers, even if two reasonable views/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. I have gone through the judgement and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court, more particularly the R & P received from the trial court and also considered the submissions made by learned APP for the appellant State as well as learned advocate for the respondent-accused, following facts are emerged:

7.1. In the Dying Declaration dated 26.08.2007, the deceased had stated that as she got angry, she lighted matchstick and the fire had occurred and in the statement made before the Doctor, it is coming on record vide Exhibit 31, it has been stated before the Doctor that she was not burned by her in-laws, that there are contradictions within six hours from the Dying Declaration produced vide Exhibit-16 and Exhibit 31 which was given before the Doctor, the incident had occurred on 25.05.2007 and within six hours, vide Exhibit 31, it has been noted that the theory of suicide has been stated by the deceased. If the oral evidence of the father of the deceased is seen, wherein he has deposed vide Exhibit-8, he has stated that his daughter was happy and whenever she used to come to his residence, she was always happy.

7.2. The mother of the deceased has been examined vide Exhibit-9, wherein she has stated that her daughter was of sensitive nature and was staying separately from the husband and she has also stated that she is not aware, if her daughter died because of burns while making food and that she does not know how burns were there on her daughter.

7.3. The Trial Court has also taken into consideration that in the Dying Declaration, vide Exhibit-16, the Doctor has noted that the patient was conscious but it has not been stated that the patient is conscious when the Dying Declaration is taken.

7.4. Moreover, the date of taking the Dying Declaration is also contradicting, as the date that has been mentioned on the first page is 25.08.2007 and the same Dying Declaration last page states 26.08.2007, therefore the actual date of taking Dying Declaration is also not proved by the prosecution. Though, it has been alleged that the deceased was assaulted but the fact of her assault is not coming on record. The Trial Court has also taken into consideration that her fitness condition while taking the Dying Declaration is also not proved by the prosecution and there is a contradiction in the Dying Declaration and there is nothing on record to prove the fact that there was any mental torture on the deceased which compelled her to commit suicide. Moreover, there is no proof of direct or indirect acts of incitement to commission of suicide and the prosecution has not proved any positive action proximate to the time of occurrence on the part of the accused which compelled the deceased to commit suicide. Moreover, there is nothing on record to show that the deceased was suffering from cruelty by the accused. The Trial Court has rightly held that there was no positive evidence on record to prove that the accused by way of the conduct or spoken words, overtly or covertly, actually aided and abetted or instigated the deceased in such a manner that it leaves no other option for the deceased but to commit suicide.

7.5. The trial court while considering the evidences in detail has observed that the prosecution failed to prove the case against the accused beyond reasonable doubt. The trial court has gone into the evidence in detail and has come to the conclusion that the accused are not guilty of the alleged offence.

7.6. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

8. In the case of Mahendra K.C. v. State of Karnataka and another, [(2022) 2 SCC 129], it has been held by the Hon'ble Supreme Court that the essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

9. In the case of Mahendra Awase v. State of Madhya Pradesh, 2025 (1) Crimes 347 (SC), the observations are made with regard to abetment of suicide. It has been held that in order to bring a case within purview of Section 306 IPC, there must be a case of suicide and in commission of said offence, person who is said to have abetted commission of suicide must have played active role by act of instigation or by doing certain act to facilitate commission of suicide. It has been further observed that the act of abetment by person charged with said offence must be proved and established by prosecution before he could be convicted under Section 306 IPC. It is further observed that to satisfy requirement of instigation, accused by his act or omission or by a continued course of conduct should have created such circumstances that deceased was left with no other option, except to commit suicide.

10. The trial Court has rightly held that there was no positive evidence on record to p[rove that the accused by way of the conduct or spoken words, overtly or covertly, actually aided and abetted or instigated the deceased in such a manner that it leaves no other option for the deceased but to commit suicide.

11. In the above view of the matter, I am of the considered opinion that completely justified the trial Court in acquitting the respondent of the charges leveled against him.

11.1. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

11.2. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the Court below and hence find no reasons to interfere

with the same. Hence the appeal is hereby dismissed.

12. The judgment and order dated 07.10.2009 passed by the Additional Sessions Judge, Court no.14 Ahmedabad (City) in Sessions Case No.340 of 2007 recording the acquittal of the respondent is hereby confirmed. Bail bonds, if any, shall stand cancelled. R & P to be sent back forthwith.