(2025) 12 GUJ CK 0027

Gujarat High Court

Case No: R/Criminal Appeal No. 1824 Of 2010

State Of Gujarat		APPELLANT
	Vs	
Ganchi Ishmail @ Yusuf Abdulbhai & Anr		RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Code Of Criminal Procedure, 1973-Section 378, 379
- Indian Penal Code, 1860-Section 306, 498A

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Yuvraj Brahmbhatt, Yogendra Thakore

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 30.07.2010 passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No.5 of 2010 for the offences punishable under Sections 306 and 498A of the Indian Penal Code, the appellant - State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “the Code”).

2. The prosecution case, as unfolded during the trial before the lower Court, is that, on 10.08.2009, when the complainant, who is a resident of Mumbai, came to Kalol at his in-laws’ place in morning, he went to meet his daughter at Village : Kadi in evening. At that time, she has made a complaint against her brother-in-law (‘Diyar’) and his wife (‘Derani ’), who were residing at the same property but on ground floor, regarding light bill and water supply; and that she could not tolerate the same; and that the complainant has persuaded his daughter and stayed with her for two days and thereafter, returned to Kalol. Thereafter, on 14.08.2009, at about 01:30 p.m., the niece (‘Bhani’) viz., Sadaf has called on mobile to the complainant that her mother i.e. Asumana is

not well and he, therefore, talked with his daughter - Asumana; and that she told to the complainant to come immediately there. Therefore, the complainant reached there in rented auto-rickshaw. He came to know that the deceased has consumed poison due to regular quarrel with the brother-in-law and his wife. The deceased has written a letter to be given to the police wherein she has named these two persons. Therefore, a complaint is lodged by the complainant before the Kadi Police Station for the offences punishable under Sections 306 and 498(A) of the Indian Penal Code.

3. After investigation, sufficient prima facie evidence was found against the accused person/s and therefore charge- sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Sessions Case No.5 of 2010. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined the witnesses and also produced various documentary evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which they were charged, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. 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.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial

Court, the following aspects weighed with the Court :

8.1 The prosecution has examined P.W.1 - Dr.Bhaktibhai Varvabhai Prajapati vide Exh.12. From his deposition, it comes out that when the deceased had come to the hospital, the deceased was unconscious and was not in a position to give any answer. It is also stated in his deposition that even during her treatment, the deceased was unconscious and while treatment, she was not aware as to what kind of poison she has consumed and thereafter, the deceased was transferred to the V.S.Hospital, Ahmedabad for further treatment.

8.2 P.W.2 - Dr. Pragneshbhai Bharatkumar Parmar has been examined vide Exh.15 and in his deposition, it comes out that he is residing at Mumbai and on 10.08.2009, he had come to his in-laws house and thereafter at 10 a.m., he had gone to meet his daughter (deceased) and at that point of time, he was informed that there were disputes between the deceased and the accused for paying electricity bills and water supply.

8.3 It is also coming forward from his deposition that he has stayed there with his daughter for two days; and that on 14.08.2009, he received a call from his granddaughter about the said incident; and that on 14.08.2009, when the said witness reached at the Government hospital and she was taken in a car, at that point of time, the deceased had said that he had taken this step because of the harassment by the accused. It also comes on record that the deceased had expired on 15.08.2009 at night hours and after performing the last rites. As the the daughter of the deceased had given a note to him, but a complaint was not filed for three days and the said witness has also not been able to justify the delay in filing a complaint. With respect to the said note, which is produced vide Exh.17, the same has not been proved by the prosecution by examining any handwriting expert.

8.4 The prosecution has also examined P.W.3 - Umeshbhai Rajendraprasad Brahmbhatt at Exh.18, whereby it transpires that the deceased was paying the bill. He is also not aware as to how the bill was being paid. He was also not present when the alleged quarrel had taken place.

The prosecution has examined P.W.4 - Ahemadshaw Mastansha Fakir vide Exh.20, who is the panch witness.

8.5 Vide Exh.22, the prosecution has examined P.W.6 - Ayubbhai Jahangirbhai Malek, who happens to be a neighbour of the deceased, who was not present at the time of the incident. In his cross-examination, he has stated that he was not present in any of the quarrels of the accused with the deceased. He had denied that he has made a statement before the police that the quarrel between the deceased and accused was going on since last 2-3 years.

8.6 Vide Exh.23, the prosecution has examined P.W.7 - Jubedaben Idrishbhai Ghanchi, who is also a neighbour of the deceased. She had not entered into the house of the deceased on the date of the incident and had not talked to the deceased.

Vide Exh.24, the prosecution has examined P.W.8 - Ahemadbhai Abdulbhai Ghanchi, who is a husband of the deceased and in his deposition also, there are lot of contradictions and

discrepancies.

8.7 The prosecution has examined P.W.9 - Sadaf Ahemadbhai Ghanchi vide Exh.33, who is a daughter of the deceased. From her evidence, it has come on record that there is a sub-meter for the electricity supply, that is passing through the residence of the accused. It has also come on record that the deceased had gone at around 10 a.m. to take the sub-meter, which was given only before a week from the said incident. In the cross-examination, it is also coming forward that before the date of incident, the entire light bill has been paid; and that the alleged quarrel took place was only because of the said sub-meter.

8.8 If the oral evidence of Shakib Ahemadbhai Ghanchi - P.W.10, who has been examined vide Exh.34, is taken into consideration, it has come forward in his deposition that no quarrel took place on the date of the incident; and that there was no fight in the morning because of the light bill.

If the deposition of Ashokkumar Mulshankar Purohit, ASI - P.W.11, who has been examined vide Exh.35, is taken into consideration, in his cross -examination, he had not given a statement that there was any quarrel between the deceased and the accused. In his deposition, it is also coming out that in the complaint, it is not mentioned that on 15.08.2009, the daughter of the deceased had said that there was a quarrel between the accused and the deceased with respect to payment of light bill.

8.9 The prosecution has also not been able to prove the signature / handwriting of the deceased, which is produced at Exh.17. The prosecution has also not been able to justify the reason as to why the letter Exh.17 was not given to the police on the date when the deceased had consumed poison and/or the date when the deceased had expired and/or the date when the deceased was cremated. The fact of the note, that has been written by the deceased, is also not shown by the complainant and/or the police at Kadi Hospital. The handwriting on the said document - Exh.17 is also not identified by any independent witness and/or handwriting expert.

8.10 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.

9.1 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.

9.2 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. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, this Court is of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

11. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

12. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

"… This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial# court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

13. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

14. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the

credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

15. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

16. In the case of Chandrappa v. State of Karnataka, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 Criminal Procedure Code, 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."

17. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

18. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondents - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

19. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is dismissed, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.