

(2025) 12 GUJ CK 0067

Gujarat High Court

Case No: R/Criminal Appeal No. 623 Of 2010

State Of Gujarat

APPELLANT

Vs

Fulabhai Varsingbhai Pandore &
Anr

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 114, 306, 498A
- Code Of Criminal Procedure, 1973-Section 378, 379

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Jyoti Bhatt, RJ Goswami

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1.1 Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 16.11.2009 passed by the learned Additional Sessions Judge, Dahod, in Sessions Case No.43 of 2008 for the offences punishable under Sections 306, 498A and 114 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").

1.2 It is reported that during the pendency of this appeal, respondent No.1 has expired. Therefore, this appeal is disposed of as abated qua respondent No.1 only.

2. The prosecution case, as unfolded during the trial before the lower Court, is that, marriage of the deceased - Sheelaben Jithrabhai Katara, W/o. Shaileshbhai Fulabhai Pandor has solemnized before one year of the incident; and that on 11.10.2007, the complainant - Jithrabhai Nathabhai Katara received a message from villages that his daughter has fallen down in the Well; and that due to ill-treatment given by the in-laws regarding dowry, she has committed suicide is the

complaint of the complainant before the Fatepura Police Station for the offences punishable under Sections 306, 498(A) and 114 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.43 of 2008. 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 neither examined the husband of the deceased nor has examined any independent witness.

8.2 If the testimony of P.W.1 - Dr.Shakjibhai Gavjibhai Bhabhor, who has been examined vide Exh.16, is taken into consideration, he is the doctor who has carried out the postmortem and from the postmortem report, it has been proved by the prosecution that there were no bruises and there were no external injury on the deceased.

8.3 The Court has also taken into consideration the evidence of the father of the deceased viz., Jitharabhai Nathabhai Katara - P.W.3, who has been examined vide Exh.20, and in his testimony also, there are lot of contradictions and discrepancies. In the cross-examination, the said witness has not stated that the deceased used to come to her parental house when she was upset with her in-laws.

Further, from the deposition of the father of the deceased, it has also come on the record that there was no demand of any dowry from the in-laws of the deceased. The Sessions Court has also taken into consideration that though the incident has taken place on 11.10.2007 and the complainant has stated that he has filed a complaint on the same day, but, in examination-in-chief, the said witness has stated that he has filed a complaint after two days of the incident and therefore, there are lot of contradictions and discrepancies in his deposition.

8.4 From the deposition of the father of the deceased, the prosecution has not been able to prove that there was any mental and/or physical assault on the deceased by the accused. P.W.5 - Sitaben Pravinbhai Machhar, who has been examined vide Exh.23, who is a sister of the deceased, has deposed that there were quarrels on trivial matters between the in-laws and the deceased.

The other relatives who have been examined vide Exh.24 i.e. Dhirjibhai Manabhai Katara - P.W.6 also states that there were trivial fights between the in-laws and the deceased. If the testimony of P.W.7 - Dhirjibhai Manabhai Katara, Exh.25 and P.W.8 - Mansingbhai Khatubhai, Exh.26 are taken into consideration, they have not stated that what kind of harassment was done by the accused to the deceased.

There is also no evidence as to when the deceased had fell in the Well. It has also come on record that the said Well was used for the purpose of drinking water. It has also not come on record that whether the deceased fell in the Well accidentally or suicidal. The prosecution has failed to show the time of the death of the deceased. The prosecution has also not proved that who has first seen the dead body and who has brought out the dead body from the Well.

8.5 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 is 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, reappraise 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.