IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 29th February, 1996.

CRIMINAL APPEAL NO. 1475 OF 1984

For Approval and Signature:

THE HON'BLE MR. JUSTICE R.R. JAIN

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Shri K.P. Raval, APP for the appellant.
Shri Janak V. Japee, Advocate for the respondent.

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Coram: R.R. Jain, J. & H.R. Shelat,J.
(29-2-1996)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

This appeal has been directed against the judgment and order of acquittal dated 31-8-1984 passed in Sessions Case No. 141 of 1983 by the then Additional Sessions Judge, Ahmedabad (Rural) at Narol.

2. The respondent married Kokilaben, the deceased after his former wife Hansaben died. Hasmukh Ishwarlal is the brother of

the deceased, Kokilaben. The respondent and Kokilaben were residing at Gandhinagar in Sector No.23. The parents, two sisters and brother of the respondent were also residing with them. After the marriage for few months their marriage life was happy and no one had any problem, but later on dissension arose between the two and both were quarrelling often pushing the war-button. Some times on the point of ornaments or some times on the point of watch or other things, either of the two used to pick a fight. The respondent never missed a chance to nettle Kokilaben and nag her. Continuously she was scorched with invectives. She was treated like a chattel and a beast. Humanism was foreign to the respondent, he was a terror to Kokilaben. She was often humiliated and it was difficult for her to reconcile. Her married life had come under strains. She was made to realise that life was not worth living, and something extreme would be the solution, because by resorting to other available remedial measures she did not like to be out of the frying pan into the fire. On 19-9-83 in the evening the respondent bickered with Kokilaben although she used to swallow her vexation always and bear anguish. She was badly humiliated, and disconcerted, and ideated to die uttering "better die today than tomorrow". At 9.00 p.m. on that day she went into the kitchen, bolted the door from inside and burnt herself pouring kerosene on her person and committed suicide. A complaint was lodged by Hasmukh the brother of the deceased before the police at Gandhinagar. At the conclusion of the police investigation, the respondent was chargesheeted for the offence under Section 306 and also Section 201, IPC before the Court of the Judicial Magistrate (First Class) at Gandhinagar. The learned Judicial Magistrate at Gandhinagar being not competent in law to hear and decide the matter committed the case to the Court of Sessions, Ahmedabad (Rural) at Narol. The case then came to be registered as Sessions Case No. 141 of 1983. A charge Exh.4 against the respondent was framed to which he pleaded not guilty. The prosecution then led necessary evidence. Appreciating the evidence before him, the learned Judge below reached to the conclusion that the prosecution had failed to bring the guilt home to the respondent beyond reasonable doubt. He therefore acquitted the respondent. Being aggrieved by the order of acquittal, the State has preferred this appeal.

3. Mr. Raval, the learned APP representing the State submitted that the learned Judge erroneously appreciated the evidence and acquitted the respondent. There was sufficient evidence about terror and frequent quarrels on record going to show clearly that respondent was the tormentor and that fact was sufficient to hold that the respondent abetted his wife Kokilaben to commit suicide and thereby committed the offence. Our attention was drawn to the evidence of Hasmukh Ishwarlal (Exh.22) Harnarayan Pandya (Ex.24), Sharmishtaben Jasubhai (Ex.26) and Lilaben Amritbhai (Exh.27). Mr. Japee the learned advocate

representing the respondent contended that generally the in-laws of the husband would make a mountain of a mole-hill and would always assume wickedness, hostility, design, extravaganza, meanness, wile, and what not ? Because of prejudices and ill-based notions, the in-laws would deprecate the husband and his family members. The neighbours would also be sailing in the same boat adopting sympathetic and sentimental attitude. He therefore urged to discard the evidence of these witnesses, who are either the in-laws or neighbours of the respondent.

4. Always the witnesses cannot be condemned on the ground canvassed by Mr. Japee. In some cases without any scruple on the ground of hostility, ill-based notions and assumption, relationship or neighbourhood, some may be inclined to depose before the court. In law therefore the evidence of such witnesses has to be scrutinised with extra care and very closely. After minutely examining the evidence of such witnesses, if it is found that the evidence is free from doubt, true, appealing, free from prejudices or ill-based notions, and its credibility is beyond impeachment, the court is free to accept the same and place reliance thereon and conclude what is logically possible.

5. A perusal of the evidence of aforesaid four witnesses shows that endeavour of everyone is to put his finger on respondent saying that he was never irenical, but inhuman and inimical to the deceased, and his savagery as well as satanic conduct and treatment led the deceased to end her life, but their versions are not free from doubt. Hasmukhbhai (Ex.22) the brother of the deceased has tried to find fault with the respondent recollecting his irksome conducts on different occasions in past as well as subsequent to the incident, but he has not stated all those facts about ill-treatment, harassments, hostility, douceur; and doleful life of the deceased. Harnarayan Pandya the father of Hansaben, the former wife of the respondent has not stated before the police those facts about which he deposed before the court namely his daughter Hansaben also met with the likewise fate. Sharmisthaben and Lilaben have also not stated all those facts before police which they later on stated before the courts. Before the court all have, improving their case suitably, tried to rope in the respondent. As these witnesses have divagated making material improvements, their evidence cannot be termed credible and trustworthy and free from echoing bias, prejudices, ill-will or revenge. The contention advanced on behalf of respondent cannot hence be swept under the carpet.

6. Ignoring the infirmities appearing if their evidence is considered, the prosecution will get no ground to stand upon. No doubt all the four witnesses have stated about the quarrelsome married life of the two as alleged by the prosecution, as well as dejection and mortification of the deceased. It was awful for

the deceased to tolerate the situation she was put to after marriage. The emerging effect of their evidence is that married life of Kokilaben was not a buxom but a desolate. However frequent quarrels making the life desolate is not sufficient, without the apple of discord being on record, to connect the respondent with the offence. Before we proceed we may refer some of the decisions making the law clear.

7. The Apex Court in the case of Chanchal Kumari & Ors. vs. Union Territory, Chandigarh - AIR 1986 S.C. 752 has observed that so far as offence under Section 306 about the abetment to commit suicide is concerned, there should be dependable evidence with regard to actual abetment by the accused. If the dependable evidence is not there the accused would be entitled to acquittal. Later on the Division Bench of this High Court had the occasion to deal with the question in the case of Rameshbhai Ranchhodbhai & Anr. v. State of Gujarat, - XXX (2) GLR 834 = 1990 (1) Crimes 417 wherein keeping Sec. 107, I.P. Code in mind it is laid down as under;

"For establishing abetment covered by Clause Thirdly read with Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of Clause Thirdly. What is required to be established is that the person against whom the charge of abetment is levelled has done something in order to facilitate the commission of the offence, what is, therefore, required is that the person against whom charge of abetment is levelled has to do something purposefully which facilitates the commission of the offence. It cannot be said with any stretch of imagination that a person subjecting a woman to cruelty is guilty of abetment. Sections 306 and 498A are two independent Sections in the Indian Penal Code. While considering the guilt or otherwise of an accused for the offence punishable under Sec. 306 I.P.C., we have to read only Secs. 306 and 107 I.P.C. Section 498A I.P.C. is out of question so far as the question of abetment is concerned. In view of this, it is difficult to support the finding of the learned trial Judge that the appellants are guilty of the offence punishable under Sec.306 I.P.C."

Likewise question arose before the Calcutta High Court in the case of Niharbala Banerjee & Anr. v. The State - 1989 Criminal Law Journal (NOC) 38 wherein it is made clear that "The mere fact that the deceased wife was treated with cruelty by her husband and her in-laws is not sufficient to prove the abetment by the

husband in commission of suicide. There must be mens rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something more than a mere passive acquiescence. In the absence of proof of any direct or indirect acts of incitement to the commission of suicide or a conspiracy or any act facilitating the commission of suicide, it cannot be said that the accused was guilty of abetment to commission of suicide." We think it worthwhile to refer the decision of the Supreme Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra - (1984) 4 S.C.C.116 wherein psychological aspect of suicide is nicely dealt with observing :

"The psychological aspect of suicide is an important factor to be taken into account while reappreciating the evidence. The melancholy marriage may create so much of emotional disorder resulting from frustration and pessimism that one may become psychotic and develop a tendency to end his life. Persons with such psychotic philosophy or bent of mind always dream of an idea; they possess a peculiar psychology which instills extreme love and devotion but when their ideal fails or when they are faced with disappointment or find their environment so unhealthy or unhappy, they seem to lose all the charms of life and they are driven to end their life. Ruptured personal relationship plays a major part in the clinical picture. Further, the psychologically oriented theories view that suicide is a means of handling aggressive impulses engendered by frustration. Revenge fantasies are associated with suicide. In cases of women of sensitive and sentimental nature it has usually been observed that if they are tired of their life due to the action of their kith and kin, they become so desperate that they develop a spirit of revenge and try to destroy those who had made their lives worthless and under this strong spell of revenge sometimes they can go to the extreme limit of committing suicide with a feeling that the subject who is the root cause of their malady is also destroyed. Moreover, the constant fact of wailing and weeping, feeling miserable, feelings of hopelessness about the future, suicidal thoughts etc. which show depressed mood as also factors such as fear, anxiety and worry are some of the important symptoms of an intention to commit suicide."

8. If the evidence is viewed keeping such law in mind, we do not see any reason to accept the contention advanced on behalf of the State and upset the finding of the lower Court. Simply some one comes before the Court and says that both the spouses were often quarrelling is not sufficient because that would not clearly establish the knowledge or intention relating to the

crime and proximate assistance. There may be difference of opinions. If on one or another issue the spouses are often quarrelling it is the usual wear and tear of the married life, and certainly that would not lead any one to end his/her life. One would bring end of his/her life if he/she is put to the compelling or alarming circumstances with no option. The prosecution has therefore to show what was the apple of discord so as to determine about abetment. The case in general terms is not sufficient. Here in this case it is not made clear as to what was the subject of quarrels on the day of the incident what was the issue who initiated the quarrel, in what context both were quarrelling, and who was at fault for the quarrel. With regard to the past quarrels also it is ambiguously and in general terms alleged and stated that both were often quarrelling, but it is not made clear in what context, and who was at fault ? The party at fault if ultimately facing frustration of his/her plan goes to the extreme i.e. suicide the opposite party cannot be blamed and held liable. In different words, if extremity is one's own creation, and the opponent is blamed, it would amount to roguery supplants justice. Nothing can be inferred or assumed for or against the party or the court cannot jump to the conclusion that husband is always at fault, and wife is the victim of the wickedness of the husband. As made clear by the Calcutta High Court in the case of Niharbala Banerjee (Supra), there is also no evidence about the knowledge and intention relating to the crime and proximate assistance. It is pertinent to note that the Calcutta High Court has held to which we agree that merely on the fact that the husband was not treating the wife properly and was treating her with cruelty will not be sufficient to establish the abetment. In this case, even if on the basis of the evidence of the above referred witnesses it is assumed that the respondent was often quarrelling with the deceased, that will not amount to abetment for committing suicide it might be owing to above quoted psychological factors and symptoms taking shape independent of abetment.

9. In view of this matter, Mr. Raval the learned APP drew our attention to the evidence of Sharmisthaben recorded at Exh.26. According to Sharmishthaben on the day of incident few hours before the incident the deceased was inquiring about the floor mill as she wanted to go there taking grist. Thereafter she started to cry and on being asked she stated about the ill-treatment. Few hours thereafter when Sharmishthaben went into her kitchen she could hear hot exchange of words and found that respondent and Kokilaben were quarrelling. She then heard the utterance of respondent viz. "better die today than tomorrow". Whether such utterance can be said to be the abetment in the eye of law has to be examined for it might be the outburst of one's own fatuity or anger or consternation without any intention or knowledge or might be the rude or insulting but firm reaction rather than nurturing the desire or stubbornness or

levity. Abruptly, without considering merits or demerits of the issue one would jump to the conclusion against the husband. The court has to dissect the merits thereof and reach to the just and proper conclusion. In what context the same has been uttered has to be examined, but unfortunately the evidence about the context is conveniently kept away from the Court or who was at fault is also veiled, and therefore it would not be just and proper to jump to the conclusion only on the basis of that statement that the accused abetted. Apart from this aspect the evidence of Sharmishthaben is also not reliable. In the cross-examination she had to admit when necessary questions were put to her that she did not state before the police about the quarrels in past, and the fact that the deceased used to tell her about her miseries and woes. When she has not preferred to state about the quarrels and the information she used to gather about the ill-treatment, miseries and woes from the deceased and has preferred to state before the Court, it can be said that here is a witness who has made alarming improvements so as to rope in the respondent. The Court also cannot overlook the tendency of relatives and neighbours who add facts or shape the case differently out of love and affection or sympathy for the deceased and hatred or prejudice towards the husband or in-laws of the deceased. Owing such tendency and the improvements in the case, the prudence dictates that we should insist for corroboration. There is no corroborative evidence about the statement alleged to have been made by the respondent which according to the prosecution immediately abetted the deceased to end her life. Lilaben Amrutbhai is the next door neighbour. But she is silent on this aspect and there is no credible corroboration to the evidence of Sharmishthaben who has come forward with the abetting statement made by the respondent.

10. It was next contended on behalf of the State that soon after the incident the respondent remained inert and slothful as if nothing had happened in the house and he was having no concern whatsoever. He ought to have extricated the deceased and gone to the hospital along with the others for providing the best treatment. His such unnatural conduct points to his guilty consciousness. No doubt, Hasmukh the brother of the deceased has accordingly tried to expose the respondent. But we cannot miss to note one of the facts brought on record. Sudhaben Jitendrabhai (Exh.29) has been examined. She had rushed to the scene of the offence soon after she came to know about the same. When asked, she has showed ignorance about respondent's going to the hospital. On being trapped drawing her attention to her police statement she had to admit that before the police she did make the statement that when the deceased was being put in the ambulance van, the respondent requested many others present there to accompany him to the hospital and help him, and into the ambulance van he did board and take his seat and went to the hospital. We are aware about the fact that the evidence before

the police is no evidence and that cannot be considered, but the evidence of this witness shows that suitable improvements about the conduct of the respondent have been made by the prosecution so as to make him appear a rogue. We cannot therefore on such incredible evidence jump to the conclusion that respondent was inert and his conduct was highly deplorable indicating the criminal mind. The contention must therefore fail.

11. Before we pass the final order, we think it proper to mention that we agree with the learned Additional Public Prosecutor that atrocities on women are going berserk. The society and State have to face set back as such incidents lead us from civilization to barbarism. Everything moves to the reverse. Hence the courts have to heavily come down upon the criminals. The courts are also equally worried about the atrocities on women but we, as the Court, have to appreciate the evidence and decide the case remaining within the four corners of law. Our satisfaction or a doubt is not sufficient if it is not consistent with law and we cannot on the basis of conjectures and inferences jump to the conclusion against the accused. In law it is incumbent upon the prosecution to prove the charge beyond reasonable doubt and if prosecution fails to prove the same, the court would be helpless. For the aforesaid reason, the charge is not proved. Consequently we have to reluctantly pass the final order confirming the order of acquittal. No other submission was advanced.

12. In the result, the appeal being devoid of merits is, hereby dismissed.

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