

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 807 of 1993****For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**  
**HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-  
Sd/-

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- 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 the judgment ?
  - 4 Whether this case involves a 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 ?

1 to 5 NO

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**UDABHAI MANGALBHAI BARIYA - Appellant(s)**  
**Versus**  
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**

THROUGH JAIL for Appellant(s): MS BANNA S DUTTA for Appellant(s): 1,  
MR AJ DESAI ADDL PUBLIC PROSECUTOR for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**  
**and**  
**HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 31/08/2005**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

1. This appeal is directed against the judgment and order dated 7.7.1993 passed by the learned Sessions Judge, Godhra in Sessions Case No.58 of 1993 convicting

the present appellant (original accused No.1) of the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (IPC) and sentencing him to life imprisonment and also fine of Rs.500, in default, simple imprisonment for 15 days and also sentencing him to five years simple imprisonment and fine of Rs.500, in default, simple imprisonment for 15 days. The learned Sessions Judge also ordered the aforesaid sentence of five years to run concurrently with the life imprisonment.

2. The appellant was charged with the offence of causing death of his wife, Raiben, between 10.00 p.m. and 03.00 a.m. on the night between 14th and 15th January, 1993 by strangulating her. Both the appellant (accused No.1) and his mother, Rukhiben, were also charged with the offence of concealing the offence and destroying the evidence by tying a rope around the neck of the deceased to show that the deceased had hanged herself. Both the accused were accordingly charged with the offence punishable under Section 201 read with Section 114 of the IPC. In the alternative, both the accused were also charged with the offence of abetting suicide of deceased Raiben and, therefore, guilty of the offence punishable under Section 498 of the IPC (Sec.306

with Sec.498-A of the IPC). Both the accused pleaded not guilty and the prosecution led the following evidence:

(i) PW.1 Bai Nandaben, mother of the deceased, stated that the deceased was married to the accused about 12 years prior to the incident. That the appellant was in the habit of drinking liquor and beating up the deceased wife. The appellant had driven out the deceased from the matrimonial home about 10-12 times, but since the deceased and the accused had young minor children, the parents of the deceased were persuading the deceased to go back to the matrimonial home. In the morning of 15/1/1993, the nephew of the father of the deceased had gone to the place of the witness and informed her that the daughter of the witness was strangulated and was hanged and, therefore, they rushed to the place of the accused. This witness stated in her cross-examination that the accused had strangulated the deceased and thereafter hanged her. The version of the mother of the deceased that there was serious quarrels between the accused and the deceased and that the accused was consuming liquor and beating up the deceased was not seriously taken in her cross-examination. The suggestions that the deceased had committed suicide were also denied.

(ii) Similarly, PW.2 Vikrambhai, brother of the deceased, also deposed on the same lines. This witness further stated that when they reached the scene of offence, the witness asked Pushpatbhai, minor son of the deceased and the accused, as to how the incident took place and the said boy stated that his father had strangulated his mother and that accused No.2, mother of the accused, had brought a rope to hang the deceased. The boy also stated that quarrels had erupted on 14.1.1993.

(iii)PW.8 Pushpat, the son of the accused, aged six years, was also examined at Ex.22 without administering oath. This witness turned hostile and stated that, at the time of the incident, this witness was with his grandfather, i.e. father of the accused.

(iv) Apart from the other panch witnesses who supported the inquest panchnama and the panchnama of the scene of offence, the prosecution had also examined two witnesses, i.e. wife of the brother of the accused and the uncle of the accused, who turned hostile.

(v) PW.7 Dr.Y.M.Master was examined as the medical witness who narrated the eight injuries sustained by the

deceased as mentioned in the postmortem note and this medical officer at the Shahara Community Health Centre, subsequently reiterated the cause of death mentioned in the postmortem report that the death was due to asphyxia due to throttling.

3. After considering the documentary and oral evidence on record, the learned Sessions Judge held that the present appellant, i.e. accused No.1, had strangled the deceased and that thereafter the appellant had tied a rope on the neck of the deceased and hanged her so as to put up a case of suicide of the deceased. The learned Judge, however, acquitted accused No.2, the mother of the accused, of the offence and accused No.1 was convicted of the offence punishable under Sections 302 and 201 of the IPC to suffer life imprisonment for the first offence and five years simple imprisonment for the second offence.

4. It is against the aforesaid judgment and order that the present appeal has been preferred.

5. The learned advocate for the appellant-accused, Ms.Banna Dutta, has made the following submissions:

5.1 There was no witness to the incident. Both the mother and the brother of the deceased had rushed to the scene of offence in the morning of 15.1.1993. The son of the deceased had also not supported the prosecution case. The injuries on the body of the deceased were consistent with suicide by hanging and, therefore, the benefit of doubt should be given to the appellant. The accused himself had gone to the police station to lodge the information on 15.1.1993 at about 9.30 in the morning stating that on account of quarrel in the evening of 14.1.1993, the deceased had committed suicide. This conduct on the part of the accused is also consistent with the innocence of the appellant and inconsistent with the prosecution case.

6. On the other hand, Mr.Desai, learned A.P.P. has supported the judgment under appeal and referred to the medical evidence and has also relied on the Medical Jurisprudence and Toxicology to explain the distinct features between the symptoms of hanging and strangulation. The A.P.P.has also submitted that there was no serious challenge to the prosecution case that there were quarrels between the accused and the deceased and that the deceased was several times required to go to

her parental home. It is further submitted that the very fact that the medical evidence indicates death by strangulation by throttling and thereafter the deceased was found hanging clearly establishes the *mens rea* on the part of the appellant.

7. On the question whether the deceased died on account of homicide by strangulation or suicide by hanging, the defence case is that the deceased died on account of suicide by hanging and not by strangulation. It is, therefore, necessary to consider the difference in the medical symptoms of hanging and strangulation which are explained in Modi's text book on Medical Jurisprudence and Toxicology, 21<sup>st</sup> Edition, Page No.202-203 as indicated in the following chart:

Hanging	Strangulation
<p>1. Face, usually pale and petechiae rare.</p> <p>2. Neck, stretched and elongated in fresh bodies.</p> <p>3. External signs of asphyxia, usually not well marked.</p> <p>4. Bleeding from the nose, mouth and ears very rare.</p> <p>5. Ligature mark, oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</p> <p>6. Abrasions and ecchymoses round about the edges of the ligature mark, rare.</p> <p>7. Subcutaneous tissues under the mark, white, hard and glistening.</p> <p>8. Injury to the muscles of the neck rare.</p> <p>9. Carotid arteries, internal coats ruptured in violet cases of a long drop.</p> <p>10. Fracture of the larynx and trachea, very rare and that too in judicial hanging.</p>	<p>1. Face, congested, livid and marked with petechiae.</p> <p>2. Neck, not so.</p> <p>3. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).</p> <p>4. Bleeding from the nose, mouth and ears may be found.</p> <p>5. Ligature mark horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</p> <p>6. Abrasions and ecchymoses round about the edges of the ligature mark, common.</p> <p>7. Subcutaneous tissues under the mark, ecchymosed.</p> <p>8. Injury to muscles of the neck, common.</p> <p>9. Carotid arteries, internal coats ordinarily ruptured.</p> <p>10. Fracture of the larynx and trachea, often found also hyoid bone.</p> <p>11. Scratches, abrasions finger nail marks and bruises on the face, neck and other parts of the body, usually present.</p>



8. In the postmortem note at Ex.21, the medical officer has enumerated in Column No.17 to 19 the following injuries:

*"(17)(a) Bruise 3 cm. X 2 cm over right forehead.*

*(b) Bruise 1.5 cm x 1 cm. over angle of right mandible.*

*(c) Thumb mark 2 x 1.5 cm. on right side neck 1-1/2" below right angle of mandible.*

*(d) Finger mark 1" x 1/2" on the left side of neck 1-1/2" below left angle of mandible 2-1/2" on the left of midline.*

*(e) Abrasions present on back of left shoulder over right elbow.*

*Another aspect of left hand and another aspect of left leg below left knee, over left knee, over right angle (another aspect).*

*(f) Ligature mark present on the front of left side neck. No congestion or abrasion about in margin and no change in the tissue underlying it.*

*(18) From (a) to (e) antemortem.*

*No.(f) Postmortem.*

*(19) Point No.17 (a) Extravaction of clotted blood in the subcutaneous tissue over right forehead.*

*Brain congested."*

In column No.23, the following endorsement is made in the postmortem note:

*"Cause of death is due to asphyxias due to throttling. 16.1.2993."*

In column No.11, the endorsement is that "*Rigor mortis is present*".

9. In his evidence, Dr.Y.M.Master, PW 7 at Ex.19, specifically stated that injuries Nos.1 to 5 including fracture of larynx were antimortem and injury No.6 ligature mark around the neck of the deceased was postmortem. Injuries No.5 showing abrasions around the neck were common, as the victim would make an attempt to save herself from strangulation. Injury No.3-C and 4-D would ordinarily occur with the abrasions when one strangulates with the hand from front. The medical officer further stated that injuries No.3-C and 4-D and the fracture of the larynx were sufficient in ordinary course of nature to cause death of the victim. Injury No.6-F would be caused if the victim is hanged after having been strangulated. The medical officer further stated that in case of hanging, the neck would be stretched and elongated. The medical officer has also specifically stated that there was no abrasion marks above the ligature mark.

10. In view of the aforesaid medical evidence, it is very clear that there were well-marked external signs of asphyxia and there were abrasions round about the edges of neck and there were also subcutaneous tissues under the mark. There were injuries to the muscle of the neck and fracture of the larynx. There were also marks on the face of the deceased which would indicate that the deceased was subjected to beating before the incident. Having examined the medical evidence on record at the touchstone of the aforesaid text propounded in Modi's text book of Medical Jurisprudence and Toxicology, we have no manner of doubt that deceased Raiben was strangulated and that she had not committed suicide by hanging.

11. In light of the aforesaid finding that the deceased died on account of strangulation and not by hanging and in view of the admitted fact that the deceased was sleeping in the house of the accused on the night of the incident as admitted by the accused in his report lodged with the police station at Ex.24 at Shahara Police Station in the morning of 15.1.1993

and in view of the admitted fact that there were quarrels between the accused and the deceased on many occasions in the past and late in the night on 14.1.1993, the chain of circumstances is complete and the only possible conclusion is that the deceased Raiben died on account of strangulation caused by the accused. The information lodged by the accused at Ex.24 at 9.30 a.m. on 15.1.1993 is not inconsistent with the guilt of the accused. The incident in question took place on the night between 10.00 p.m. of 14.1.1993 and 3.00 a.m. of 15.1.1993 and after causing death of the wife by strangulation, the accused tied the deceased with a rope to create the show of suicide by hanging as per the finding already given hereinabove. In that view of the matter, the conduct of the accused in going to the police station at 9.30 in the morning and reporting death of his wife as suicide is clearly consistent with the guilt of the accused and also clearly indicates that the accused had planned murder of the wife and thereafter tried to conceal the evidence by hanging the deceased to create the show of suicide by hanging.

12. In view of the above discussion, we do not find any merit in any of the contentions urged on behalf of the appellant-original accused No.1. The appeal is, therefore, dismissed.

Sd/-

( M.S.SHAH, J.)

Sd/-

( D.H.WAGHELA, J.)

(KMG Thilake)