

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 302 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

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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 ?
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STATE OF GUJARAT....Appellant(s)

Versus

MOCHI PRAVINBHAI BHIKHABHAI JADAV &

2....Opponent(s)/Respondent(s)

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Appearance:

Ms MONALI BHATT, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1

MR DIPEN K DAVE, ADVOCATE for the Opponent(s)/Respondent(s) No. 1 - 3

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CORAM: HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**Date : 31/01/2014****ORAL JUDGMENT**

The present appeal is directed against the impugned judgment and order recording acquittal rendered by the learned Addl. Sessions Judge, Surendranagar, in Sessions Case No. 50/1997 dated 21.11.2002.

2. The facts of the case briefly stated are that accused No.1 husband and accused No.2 mother-in-law and accused No. 3 brother-in-law are said to have treated the deceased sister of the complainant, which has driven her to commit suicide. The span of the marriage is about a year. It is the case of the prosecution that she has been abused and beat for not properly attending to the domestic work. It is also the case of the prosecution that immediately after marriage of the deceased sister with accused No.1, within 3 months accused No.1 is said to have gone to Bombay with a request that he may be assisted in getting one house/room for settling there which was declined by the complainant brother and they were dropped at the place of the uncle of accused No. 1.

3. Heard learned APP Ms. Monali Bhatt for the applicant-State and learned advocate Shri Dipen Dave for the respondents-accused.

4. Learned APP Ms. Bhatt has referred to the papers including the testimony of the prosecution witnesses including the brother Bharatbhai Ranchhodbhai (Exh. 13) and also the testimony of the other brother Prakashbhai Ranchhodbhai (Exh. 12), the complaint at Exh. 14 and also other papers to support her contention about the harassment. She has stated that the deceased had just delivered a child and thereafter she committed suicide would suggest about the kind of harassment or gravity. However, she has also fairly stated that some of the letters which were addressed have not been brought on record by the prosecution. Similarly, another vital witness, sister Ushaben, is not examined. Learned APP Ms. Bhatt has therefore submitted that the present appeal may be allowed at least qua the offence under sec. 498A in view of the statutory provision and the span of married life.

5. Learned advocate Shri Dipen Dave however referred to the impugned judgment as well as the testimony of the witnesses and submitted that the ingredients for the

offence under sec. 306 cannot be said to have been established as there is no connection and proximity with the suicide. He submitted that as observed, every harassment or quarrel may not lead to such abetment for suicide. For that purpose, he referred to the provisions of sec. 306 and submitted that the ingredients for the offence cannot be said to have been made out. He also submitted that sec. 498A read with sec. 113 of Evidence Act provides for presumption, but it must be of such a nature as is likely to drive a woman to commit suicide. He therefore submitted that the prosecution witnesses have not stated as there is no evidence with regard to the fact that earlier she had returned to her parental house and thereafter they have intervened. Brother Prakashbhai in his testimony at Exh. 12 has clearly admitted that just before 20 days he had visited village Barol and had stayed there. He has also stated that he has not given any notice or called the relatives with regard to any such harassment to the deceased. Further, the learned advocate has also stated that originally there was an entry 19/96 that she had delirium suggesting disordered state of mind. He further submitted that witness Ushaben has not been examined, nor the letters have been produced though the brother who is a witness has stated that he will produce the same. He submitted that at the time of 'seemant' the relatives had gathered and therefore the allegation about the harassment for domestic work cannot be said to be abetment for commission of suicide. He submitted that instigation must be of such a nature which would lead to suicide. He submitted that the view taken by the court below cannot be said to be erroneous or perverse and therefore even if the other view is possible, the court may not entertain the present appeal merely because the other view is possible.

6. In view of these rival submissions, it is required to be considered whether the present appeal can be entertained.

7. As discussed hereinabove, from the impugned judgment and appreciation and consideration of the material and evidence, it cannot be said that the reasons given by the court below recording acquittal is perverse or contrary to the material and evidence. The testimony of the brother at Exh. 12 refers to the domestic quarrels and also the request for helping accused No.1 in settling in Bombay. However, thereafter there was

a 'seemant' were she has delivered a child and the relatives of both the sides had gathered. Therefore, it could not be said to be an instigation of such a nature which could have driven her to commit suicide. There is no evidence with regard to any incident in close proximity with the suicide. The fact that there were constant quarrels with regard to domestic work is not supported by independent witnesses inasmuch as Dakshaben (nurse) who has been examined as a defence witness at Exh. 25 has stated that she had attended for the delivery of the deceased and she was treated well. Therefore, having regard to the provisions of sec. 306 r/w sec. 498A and the reasons given for arriving at the findings and reaching the conclusion, it cannot be said to be perverse.

8. The Hon'ble Apex Court has laid down broad guidelines with regard to the scope of sec. 378 of CrPC in acquittal appeals in catena of judicial pronouncements. A useful reference can be made to the observations made by the Hon'ble Apex Court in its judgment in the case of *Chandrappa & ors. v. State of Karnataka*, reported in (2007) 4 SCC 415. Further, it is well-accepted that merely because two views are possible or the appellate court could have independently come to a different conclusion itself is not sufficient to interfere with the acquittal. Therefore, when the view taken by the court below is a plausible view, this court declines to interfere with the same.

9. The present appeal, therefore, deserves to be dismissed and accordingly stands dismissed.

(RAJESH H.SHUKLA, J.)

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