

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 632 of 1997****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.J.THAKER****Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 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 ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |
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NANIBEN WIFE OF KANJIBHAI RANCHHODBHAI & 1....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:

MR KJ PANCHAL for MR J M PANCHAL, ADVOCATE for the Appellant(s) No. 1-2

MS CM SHAH, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE K.J.THAKER

Date : 30/01/2015

CAV JUDGMENT

1. The present appeal has been filed by the appellants under Section 374 of the Criminal Procedure Code, against the judgment and order dated 13.6.1997 passed by learned Additional City Sessions Judge, Ahmedabad in Sessions Case No.14 of 1994, whereby the appellants-accused were convicted for the offence under Sections 306 of the Indian Penal Code (herein after referred to as "IPC" for short). By the impugned judgment the appellants were sentenced to undergo rigorous imprisonment for a period of two years and ordered to pay Rs.1,000/- fine and in default of payment of fine, simple imprisonment for a period of one month was imposed.

2. The case of the prosecution in short is that the accused made false allegations of theft against the deceased who was the neighbour and a distant relative and it is alleged that the accused were quarreling with her in that respect, and therefore, the deceased committed suicide. It is alleged that the hut of the accused was under repairs and therefore the household articles were put in the house of the deceased who was a distant relative and the neighbour. It is alleged that after about 15 days the accused took back the said articles, however, one Gold Ring and Clock were found missing and the accused suspected that the deceased had committed theft of the same. It is further alleged that five days prior to the incident, at the instance of the accused, the deceased and her husband had gone to a Exorcist, who had told that some one from the house of the accused had taken away the articles and further told that the deceased and

her husband were innocent. It is alleged that thereafter also the accused continued quarreling with the deceased. It is alleged that the deceased was disgusted and on 31.5.1993 at about-6.45 p.m. committed suicide by pouring kerosene and setting herself on fire. Therefore, the complaint was lodged with the police.

2.1 Investigation was carried out and charge sheet came to be filed against the accused in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions. Thereafter, charge came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

2.2 In order to bring home the charges against the accused, prosecution has examined following witnesses:

Sr. No.	Name of the witness	Exh.
1	Keshavbhai Chhanabhai Mahida	10
2	Bababhai Parmar	11
3	Manjulaben Mahida	12
4	Rajesh Popatlal Parmar	16
5	Ambalal Trikamlal	17
6	L.N.Gameti	18
7	Dr.D.G.Desai	22
8	B.R.Patel	25

2.3 The prosecution has also produced on record documentary evidence in the form of panchnama of the scene of offence, panchnama of the muddamal, inquest panchnama, complaint, etc.

2.4 Thereafter, after filing of closing purshis by the prosecution, further statements of accused persons under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused have denied the case of the prosecution and submitted that a false case is filed against them.

2.5 At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned judgment, convicted the appellants-accused. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 13.6.1997 passed by learned Additional City Sessions Judge, Ahmedabad in Sessions Case No.14 of 1994, the appellants-accused have preferred the present appeal before this Court.

3. It is submitted by Mr.K.J.Panchal, learned advocate for the appellants that the judgment of the learned Additional City Sessions Judge is quite erroneous on facts as well as on law. He also submitted that the learned Sessions Judge has not appreciated the evidence on record according to the well settled principles of Criminal Jurisprudence. He further submitted that the Court below has failed to appreciate that there were many glaring and serious infirmities in the

case of prosecution which have been very lightly brushed aside by the learned Judge which has caused failure of justice. He also submitted that the judgment and order of conviction and sentence passed by the learned trial Judge is contrary to law, against the express provisions of statute and against the evidence on record. He also submitted that the learned trial Judge ought to have considered the fact that the prosecution has failed to prove the offence under Section 306 of IPC and he therefore ought to have acquitted the accused. He further submitted that the learned Judge ought to have appreciated the fact that taking the prosecution case to be true and correct, no offence under Sec.306 of IPC is made out against the accused.

4. Mr.Panchal further submitted that the learned trial Judge ought to have appreciated that there is no intentional aiding or instigation so as to constitute the offence of abetment. He also submitted that the learned Judge ought to have appreciated the fact that the ingredients of Section 107 of IPC are not attracted to the facts of the present case. He also submitted that the learned trial Judge ought to have considered the fact that whether a normal lady would commit suicide under these circumstances. Merely because a sensitive lady has committed suicide, the accused cannot be held liable for the offence under Sec.306 of IPC. He also submitted that the learned Judge ought to have considered the fact that the accused had no intention to drive the deceased to commit suicide and the accused could not have anticipated the same. Intention and *mens rea* are the

main ingredients of the offence of abetment and they are lacking in the present case. He also submitted that the learned Judge has materially erred in law in relying upon the evidence of highly interested witnesses. He submitted that the learned trial Judge ought to have appreciated the fact that when all the nearest relatives have specifically and clearly stated that the deceased was unconscious and was unable to speak from the time of the incident till her death, the learned trial Judge ought not to have relied upon dying declaration-Exh.27. He also submitted that the learned Judge ought to have considered the fact that it cannot be said that the deceased was in fit state of mind to make any declaration. The Doctor who was on duty and who certified that she was conscious is not examined by the prosecution and no explanation is offered for non-examination. The prosecution has not examined any other staff members of the Hospital to prove that she was in fit mental state. Further, merely because she was conscious it cannot be said that she was in fit mental state of affairs to make declaration. He also submitted that it is alleged that at the instance of the accused, the deceased and her husband were taken to a exorcist. However, the prosecution has not examined this exorcist and for non-examination, no explanation is given by the prosecution. He submitted that there are material vital and important contradictions and omissions in the evidence of the interested witnesses and therefore the learned Judge ought not to have relied upon the evidence. Therefore, in that view also there is lacuna in proving the case against the accused under Section 306 of

the Indian Penal Code. He submitted that the prosecution has failed to prove the case against the present appellants beyond all reasonable doubt. He submitted that in view of above, this appeal may be allowed and the judgment and order of the lower Court may be reversed. in support of his submission, he has placed reliance on the following authoritative pronouncements.

- i) **Gangula Mohan Reddy v. State of Andhra Pradesh, (2010) 1 SCC 750**
- ii) **S.S.Chheena v. Vijay Kumar Mahajan and Another, (2010) 12 SCC 190**

5. *Per contra*, Ms.C.M.Shah has taken this Court through the evidence and has submitted that the judgment of the learned trial Judge is not such which calls for interference on the facts and the conviction of the accused should not be interfered with. She has submitted that the judgments cited by learned counsel for the appellants would not apply to the facts of this. She submitted that the learned Sessions Judge due to the allegations of theft put on the deceased and due to the frequent quarrels that were taking place between them it is rightly found that the accused was responsible for the death of the deceased. She submitted that the prosecution has succeeded in proving the nexus between the cruelty and the suicide. She also submitted that even the witnesses have supported the case of the prosecution and since the accused has committed suicide after

half an hour of her quarrel with the accused-appellants, he is rightly convicted by the learned Sessions Judge. She, therefore, submitted that the impugned judgment may not be interfered with and it may be confirmed.

6. Before considering the case on merits, it is necessary to reproduce Section 306 of the Indian Penal Code which reads as under :-

"306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

7. In the case of S.S.Chheena (supra), the Apex Court observed as under:

"19. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under:

"107. Abetment of a thing.--A person abets the doing of a thing, who-

*First.--Instigates any person to do that thing; or
Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing."*

20. Explanation 2 which has been inserted along with Section

107 reads as under:

"Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

21. *The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh v. State of M.P. 1995 Supp (3) SCC 731. In Mahendra Singh, the allegations levelled were as under: (SCC p. 731, para 1)*

"1. ... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

22. *The learned counsel also placed reliance on another judgment of this Court in Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618. In this case, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of*

"instigation". Para 20 reads as under: (SCC p. 629)

"20. 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. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In this case, the court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema may necessarily be drawn.

23. *In State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73, this Court has cautioned that:*

"17.... The court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

24. *This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605 had an occasion to deal with*

this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

27. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under

section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside."

8. From the material on record, it is clear that the conviction of the appellants is based on dying declaration of the deceased and there is no other evidence, except alleged dying declaration that the accused was giving mental and physical harassment to the deceased. The question of reliability of the dying declaration is considered by Honourable Supreme Court in the case of **Gopal v. State of M.P.** Reported in **2009 (2) GLH 489**. While deciding the said case, the Supreme Court has observed as under:

"8. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See: Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684]. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether

they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

9. It is to be noted that the High Court had itself observed that the dying declaration (Exh.P11) scribed by the Executive Officer, (PW9) at about 0435 hours in the same night was not in conformity with the FIR and the earlier dying declaration (Exh.P3) scribed by ASI Balram (PW 8) as different motives have been described. That is not the only variation. Several other discrepancies, even as regards the manner in which she is supposed to have been sprinkled with kerosene and thereafter set on fire.

10. Therefore, the discrepancies make the last declaration doubtful. The nature of the inconsistencies is such that they are certainly material. That being so, it would be unsafe to convict the appellant. The conviction is set aside and appellant is acquitted of the charges. He be set at liberty forthwith."

9. From the above observations it is clear that if a dying declaration is found to be voluntary, reliable and made in fit mental condition, the only it can be relied upon without any corroboration. In the present case, all the nearest relatives of the deceased have specifically and clearly stated that the deceased was unconscious and was unable to speak from the time of the incident till her death, therefore, the learned trial Judge ought not to have relied upon dying declaration-Exh.27. From the evidence on record, it also cannot be said that the deceased was in a fit state of mind to make any declaration. Therefore, the prosecution has failed to prove that the

deceased was subjected to cruelty or that ingredients of Section 306 of the Indian Penal Code are satisfied. Not only that, the prosecution has failed to prove that the accused has abetted the offence.

10. From the observations of the Apex Court in *S.S.Chheena* (supra), it is clear that without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Apex Court is clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that she committed suicide. Therefore, even on the touchstone of the latest decision of the Apex Court and the decisions cited by Mr.Panchal, the prosecution has not brought home the charge that the action of the accused was such which perpetrated and fastened the death of the deceased. The deceased was not staying with the accused. Therefore, it cannot be said that the accused was responsible for the suicide committed by the deceased.

11. The Apex Court in the case of **Kuldeep Kaur v. State of Uttarakhand** reported in **(2014) 10 SCC 584** has observed as under:-

“11. Mr. Ahmadi contended that the finding of the trial court holding the petitioner guilty under Section 306, IPC is on the basis of surmises and conjectures. The trial court in its judgment pertaining to the appellant has reproduced a line from the diary of the deceased, which reads as “Still she wants me to work till late.” It is contended that the trial court erred in presuming that when the deceased writes the above line in her diary she is referring to the appellant. It is further contended that conviction of the appellant deserves to be set aside as both the courts below failed to appreciate that the prosecution did not led any evidence on record to show that there was direct reasonable nexus between suicide and alleged cruelty. As both the courts below gave findings that there was no demand of dowry or any cruelty committed with the deceased in connection with demand of dowry and acquitted the appellant from charge under Sections 304B, 498A IPC and under sections 3 & 4 of the Dowry Prohibition Act, the courts below could not have come to a contradictory view that the deceased committed suicide due to cruelty committed by the appellant. Even in the diary, deceased has not written even a single word against the appellant. Perusal of the diary only shows, as also observed by the trial court in its decision in the trial of other accused persons including deceased’s husband, that the deceased was depressed and has left no interest in life.

12. Learned counsel appearing for the State has not disputed that although against the judgment of acquittal passed by the trial court acquitting the husband, father-in-law, brother-in-law and two sisters-in-law, the State preferred appeal but the same was dismissed by the High Court. However, no further appeal has been filed by the State before this Court. Learned counsel submitted that the conviction of the appellant under Section

306 IPC is fully justified.

13. We have perused the judgment passed by the trial court as also by the High Court. We have also gone through the judgments by which the husband, father-in-law, brother-in-law and two sisters-in-law have been acquitted by the trial court and affirmed by the High Court. So far this appellant is concerned, she has also been acquitted against the charges of dowry harassment but she has been convicted under Section 306 IPC.

14. A perusal of trial court judgment pertaining to deceased's husband would show that PW1, father of the deceased, in his cross examination stated that no dowry was demanded by the accused persons from the day of alliance till solemnization of marriage. Whatever stridhan was given was as per the custom and as per his will in the form of gift to his daughter. He further stated that his daughter had not told him that in the absence of Upkar Singh she remained dejected in her matrimonial house because of her mother-in-law, father-in-law, sister-in-law and husband and elder brother-in-law on the issue of dowry. Witness himself stated that only God knows why her daughter committed suicide without any reason. This witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

15. We have given our anxious consideration in the matter and analyzed the evidence of the prosecution witnesses. In our considered opinion, the evidence adduced as against the appellant does not establish the case under Section 306 of the Code. On the basis of evidence of the prosecution witnesses, conviction of the appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the

prosecution witnesses, the trial court acquitted all the accused persons except the present appellant and the said judgment was affirmed by the High Court. We do not find any strong reason to agree with the judgment of conviction passed by the trial court and affirmed by the High Court as against the appellant."

12. In view of the aforesaid observations of the Supreme Court and the factual scenario which emerges from record, it cannot be said that the accused perpetrated cruelty so as to see that the deceased commits suicide. The evidence is also very clinching and it is clear that the accused only conveyed to the deceased that he has an apprehension that she had stolen the gold ring and clock, when they were in her custody. In light of aforesaid observations of the Apex Court and considering the evidence on record, the prosecution has failed to prove an offence under Section 306 of IPC against the accused, therefore, I am persuaded to hold that the judgment passed by the trial Court is required to be interfered with.

13. Having considered evidence threadbare and the judgments on which reliance is placed herein above, the accused could not have been convicted for the offence as alleged because it cannot be said that the physical and mental torture by the accused resulted in the death of the deceased. It appears that learned trial Judge has convicted the accused on conjecture and surmises and the judgment is not based on evidence, which is borne out from record. Therefore,

the appeal is required to be allowed by reversing the impugned judgment of the learned Additional Sessions Judge.

14. The Criminal Appeal is allowed. The judgment and order dated 13.6.1997 passed by learned Additional City Sessions Judge, Ahmedabad in Sessions Case No.14 of 1994 is quashed and set aside. The accused-appellants are acquitted of the charges levelled against them. As the accused are on bail, they need not surrender. The bail and bail bond stands cancelled. Surety, if any, shall stand discharged. Fine, if any, paid by the accused shall be refunded to them by the respondent-State. Record and Proceedings be sent back to the trial Court concerned forthwith.

Sd/-
(K.J.THAKER, J)

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