

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 2319 of 2009****With****CRIMINAL APPEAL NO. 239 of 2010****With****CRIMINAL APPEAL NO. 241 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE G.B.SHAH**

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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 or any order made thereunder ?	

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HEMANTKUMAR SUNDERLAL TAILOR & 2....Appellant(s)**Versus****STATE OF GUJARAT....Opponent(s)/Respondent(s)**

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Appearance:**MR HARDIK A DAVE, ADVOCATE for the accused****MR HARSHADRAY A DAVE, ADVOCATE for the accused****MS CM SHAH, APP for the State in all three appeals**

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE G.B.SHAH

Date : 30/09/2015

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. All these appeals arise out of the same judgment and order dated 9-11-2009 passed by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.205 of 2008 whereby the original accused Nos.1, 2 and 3 were convicted and sentenced to undergo RI for thirty months and to pay fine of Rs.2000/-, in default, to suffer SI for three months for the offence punishable under section 201 read with Section 114 of IPC. They were however acquitted for the offence punishable under sections 498(A), 304(B), 306, 176 of IPC and also under section 2 of the Dowry Prohibition Act read with Section 114 of IPC. They were given benefit of set off for the period already undergone in jail. Accused Nos.4 and 5 were acquitted for the offences charged against them. Criminal Appeal No.2319 of 2009 has been filed by the accused against conviction of accused Nos.1,2 and 3, Criminal Appeal No.239 of 2010 has been filed by the State against acquittal of accused Nos.1,2 and 3 for the offence punishable under sections 498(A), 304(B), 306, 176 of IPC and also under section 2 of the Dowry Prohibition Act read with Section 114 of IPC and also for acquittal of accused

Nos.4 and 5 for the offences charged against them while Criminal Appeal No.241 of 2010 has been filed by the State for enhancement of sentence.

2. Short facts of the prosecution case are that a complaint was lodged by the complainant Manojbhai Kantilal Darji against the original accused with Padra Police Station alleging inter alia that his daughter(victim) after marriage with accused-Hemantkumar Sundarlal was residing with her husband and her in-laws. It was further alleged that as her husband was to go to Dubai, she was being tortured mentally and physically for dowry and therefore, she committed suicide at the house of her in-laws. It was further alleged that the accused without informing the police about the said incident cremated her dead body thereby destroyed the evidence. Upon filing of the complaint, police started investigation and during the course of investigation, accused were arrested. At the end of investigation, charge sheet was filed against the accused before the Court of learned Judicial Magistrate (First Class), Padra.

2.1 As the offence was triable by Court of Sessions, the learned Judicial Magistrate (First Class), Padra, committed the case to the Court of Sessions at Vadodara. The learned Sessions Judge framed charge against the accused which was read

over and explained to the accused. The accused denied all the charges and pleaded to be tried. Hence, the prosecution was asked to prove the guilt against the accused.

2.2 To prove the guilt against the accused, prosecution examined as many as eight witnesses and also produced and relied upon documentary evidence numbering 14. On submission of closing pursis by the prosecution, learned Sessions Judge recorded further statements of the accused under Sec.313 of Code of Criminal Procedure qua incriminating evidence. Upon affording opportunity of hearing to the learned advocates appearing for the respective parties, the impugned judgment and order as aforesaid in the earlier part of this judgment was delivered giving rise to prefer the present appeals.

3. Before proceeding with the matters, learned advocate, Mr.Hardik A.Dave for the original accused produced an undertaking affirmed by Jayraj Sunderlal Tailor, original accused No.2, which is ordered to be taken on record. Said undertaking reads as under:

“I, the undersigned Jayraj Sunderlal Tailor, residing at the address shown in the cause title of the Appeal and appellant no.2 herein on my behalf and on behalf of other appellants do hereby undertake and state on

oath and solemnly affirmation that :

Term Deposit of Rs.5,00,000/- but in the name of Amiben Hemantkumar Tailor (daughter of appellant no.1) aged about 9 years (DOB 3/12/2006) in Bank of Baroda, Padra Branch, Vadodara for 5 year, will not be encashed at the end of 5 years and/or will be redeposited again till Amiben Hemantkumar Tailor attained age of 21 years.

I on my behalf as well as on behalf of other appellants also undertake that said amount will not be utilized by us under any circumstances and the same will be utilized only and only for the benefit of Amiben Hemantkumar Tailor.

I state that what is stated herein above is true and correct to the best of my knowledge, information and belief and I believe the same to be true. I also state that filing false undertaking and disowning undertaking is an offence.

Solemnly affirmed at Ahmedabad on this 30th day of September, 2015.”

The learned advocate, Mr.Dave has also produced Term Deposit Receipt (TDR) which showed that the accused have jointly made a term deposit for an amount of Rs.5,00,000/- in the name of Amiben Hemantkumar Tailor, daughter of accused No.1-Hemantkumar Tailor in the Bank of Baroda,

Padra Branch, Vadodara for a period of five years. It was also stated that the accused will not encash the said TDR till the minor girl attains the age of 21 years. He, therefore, requested that considering the same, the sentence imposed on the accused may be substituted by payment of compensation of aforesaid amount, in view of a decision of the Hon'ble Supreme Court in the case of **Ankush Shivaji Gaikwad Vs. State of Maharashtra** reported in **(2013)6 SCC page 770**.

4. We have gone through the oral as well as documentary evidence on record together with the impugned judgment and order of conviction and sentence as well as the undertaking produced by the learned advocate, Mr.Hardik Dave, for the original accused.
5. Considering the peculiar facts and circumstances of the case and in view of the undertaking affirmed by original accused No.2 on his behalf and also on behalf of other accused persons having ordered to be placed on record, as the accused have jointly made a term deposit of Rs.5,00,000/- in the name minor daughter of the accused No.1 and has undertaken that said amount will not be encashed till the minor attains the age of 21 years, we deem it appropriate to give benefit of provisions of section 357 of Cr.P.C. to the

original accused Nos.1,2 and 3 by applying the principles laid down by the Hon'ble Supreme Court in (Ankush Shivaji Gaikwad) relied on by learned advocate for the original accused in lieu of the remaining sentence to be undergone by them.

6. Thus, Criminal Appeal No.2319 of 2009 is partly allowed. In lieu of remaining sentence to be undergone by original accused Nos.1, 2 and 3, original accused Nos.1, 2 and 3 have invested an amount of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation in a TDR with the Bank of Baroda in the name of minor girl-Amiben for a period of five years. In view of the same, conviction and sentence of original accused Nos.1,2 and 3 are converted into payment of compensation by giving benefit of provisions of section 357 of Cr.P.C. Original TDR, which is produced by learned advocate for the accused, shall be retained with the bank and xerox copy thereof shall be retained by the Registry of the High Court and Registry shall inform concerned Branch of the Bank of Baroda to renew the said fixed deposit from time to time and shall not allow the said fixed deposit to encash, create any encumbrance or raise any loan or deal with the same in any manner whatsoever till the minor girl attains the age of 21 years. Upon renewal, original TDR shall be retained with the bank while xerox copy thereof shall be placed on record of

the case by the Registry. Bail bonds shall stand cancelled. The impugned judgment and order dated 9-11-2009 passed by the learned Additional Sessions Judge, Vadodara, in Sessions Case No.205 of 2008 is accordingly modified to the aforesaid extent. Criminal Appeal Nos.239 of 2010 and 241 of 2010 stand dismissed. As this judgment has been delivered looking to the peculiar facts and circumstances of the case, this shall not be treated as a precedent in any other matter. Record and proceedings shall be sent back forthwith to the trial court.

(K.S.JHAVERI, J.)

(G.B.SHAH, J.)

RADHAN