

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 682 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.G.URAIZEE**

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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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STATE OF GUJARAT

Versus

SUNILBHAI MOHANBHAI CHAUHAN &amp; 2 other(s)

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Appearance:

MR KP RAVAL, ADDITIONAL PUBLIC PROSECUTOR for the  
PETITIONER(s) No. 1

MR PP MAJMUDAR, ADVOCATE for the RESPONDENT(s)

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**CORAM: HONOURABLE MR. JUSTICE A.G. URAIZEE****Date : 13/04/2017****ORAL JUDGMENT**

The State of Gujarat is in appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code" for short) to question the legality and validity of the judgment and order of

acquittal dated 16<sup>th</sup> January 2010 passed by learned Additional District and Sessions Judge, Anand in Sessions Case No.38 of 2009, whereby and where under the respondents came to be acquitted of the offences punishable under Sections 306, 498(A) read with Section 114 of the Indian Penal Code ("I.P. Code" for Short).

2 The prosecution story as unfolded during the trial is that the deceased Laxmiben was married with accused No.1 about three years priors to the incident in question. It is alleged that roughly after a period of one year after the marriage she started complaining about the ill-treatment, harassment and torture by the accused by suspecting the character of Laxmiben. While complaining about such conduct of the accused before her parents, the victim expressed that she should not be sent to her matrimonial home. At that time, the complainant and his wife used to convince their daughter and send her to her matrimonial home. It is further stated that on 9.9.2007 deceased Laxmiben delivered a girl child named Dharmishta. Thereafter, the complainant gave mobile phone to Laxmiben so that she would be in touch with the complainant and other family members at her maternal home. Thus, Laxmiben used to be in touch the complainant and other family members and she used to inform the complainant about the mental and physical harassment being caused to her by her inlaws by suspecting her character. It is further stated that one month prior to the incident in question, Laxmiben came to village Anklav as one Chhotabhai Shanabhai, elder brother of complainant's father had expired and at that time also Laxmiben informed him about the ill-treatment being caused to her at the hands of her inlaws and she declined to go back to her matrimonial home. However, the complainant convinced the deceased and sent her back to her matrimonial home. It is further stated that on

the previous day of the incident in question, i.e. on 9.1.2009 Laxmiben called the complainant over his mobile phone and informed him about the mental harassment being caused to her and requested him to take her back to her parental home. At that time, the complainant informed her that the complainant is coming to village Anklav at the time of Sankranti and that he would take her back.

It is further stated in the complaint that on the next day i.e. on 10.1.2009 the complainant received a phone call from Mohanbhai Ravjibhai Chauhan A/2 informing him that Laxmiben had left the house in the morning at 9.30 AM and her whereabouts are not known to them. Thereafter at 11 AM the complainant received another phone call from A/2 informing him that Laxmiben along with her daughter Dharmishta had jumped into a well at Vasad and that he should come there immediately. Therefore, the complainant and his wife went to Government Hospital, Vasad and thereafter lodged FIR against the respondents – accused persons.

3 Upon the conclusion of investigation, a charge sheet came to be filed against the respondents-accused in the Court of learned Judicial Magistrate First Class, Anand which came to be registered as Criminal Case No.656 of 2009. Since, the offences alleged against the respondents were exclusively triable by the Sessions Court, the learned Judicial Magistrate First Class, Anand committed case to the court of Sessions under Section 209 of the Code. Upon committal the case came to be registered as Sessions Case No.38 of 2009 in the Sessions Court, Anand .

4 On committal, the case was transferred and placed before the learned Additional Sessions Judge, Anand for trial, who had initially

framed the charge vide Exhibit 4. The same was read over and explained to the accused persons. They pleaded not guilty and claimed to be tried. In order to bring home the guilt of the respondents-accused, the prosecution adduced oral and documentary evidence as under :

#### ORAL EVIDENCE

PW No.	Name	Exhibit
1	Dr Rakesh Umakant Avasthi	11
2	Naresh P Gamethi	17
3	Manilal Naranbhai Rohit	19
4	Ranjitbhai Chaturbhai Padhiar, Complainant	22
5	Revaben Ranjitbhai Padhiar	24
6	Ambalal Shanabhai Padhiar	26
7	Poonamchand Chhanabhai Baranda	28
8	Abdulkarim Yusufmiya Shaikh	31
9	Somabhai Ditabhai Patel	33

#### Documentary Evidence

Sr.No.	Description of the document	Exhibit
1	Yadi for performing post mortem	12
2	Post mortem note of Laxmiben	13
3	Inquest Panchanama	14
4	Complaint	29
5	Yadi of Deputy Superintendent of Police	30
6	Station Diary extract	32
7	Panchnama of scene of offence	34
8	Police Report for performing post mortem	35
9	Yadi sent to Executive Magistrate	36
10	Photographs of scene of offence 8 in number	37

5 At the end of the trial, the trial court recorded further statement of the accused persons under section 313 of the Code and after hearing the arguments, the trial court acquitted the accused persons of the charges levelled against them. Feeling aggrieved by the said judgment and conviction order of the trial court, the present appeals came to be preferred.

6 I have heard Mr K.P. Raval, learned Additional Public Prosecutor for the appellant-State and Mr P.P. Majmudar, learned advocate for the respondents-original accused persons.

7 Mr K.P. Raval, learned APP submits that the evidence of father and mother of the deceased makes it very clear that deceased Laxmiben was subjected to cruelty by the respondents by keeping suspicious about her character. He, therefore, urges that the learned trial judge has committed an error in acquitting the respondents. He, therefore, submits that the appeal may be allowed and the respondents may be convicted.

8 Shri P.P. Majmudar, learned advocate for the respondents has supported the impugned judgment. He submits that the learned trial judge has rightly recorded a finding that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. According to his submission, the scope of acquittal appeal is very limited and if plausible view is adopted by the trial court for acquitting the accused person, it cannot be substituted by any other plausible in acquittal appeal. He, therefore, urges that the appeal lacks merits and the same may be dismissed.

9 The undisputed and unfortunate fact is that the dead bodies of the deceased Laxmiben and her daughter Dharmishta were found from the well. It was the case of the prosecution that the respondents killed them and disposed of the dead bodies by throwing them in the well as they were suspecting the character of deceased – Laxmiben.

10 The evidence of the complainant – Ranjitbhai Chaturbhai Padhiar, PW No.4 - father of the deceased and Revaben Ranjitbhai Padhiar, PW No.5 – mother of the deceased was recorded vide Exhibit 22 and 24 respectively. They generally stated in their respective testimonies before the Court that their daughter – Laxmiben was subjected to harassment by the respondents, they do not elaborate the reason for such harassment and cruelty. PW No.5 – Revaben has faintly stated in her testimony that the respondents were having false suspicion, but she does not elaborate the nature of suspicion which the respondents were harbouring against the deceased. Thus, it does not emerge from the evidence of these witnesses that the deceased Laxmiben was subjected to incessant cruelty or harassment, which was of such a degree that it left no option with the deceased but to end her life.

11 Mr Majmudar, learned advocate for the respondents has rightly submitted that the scope of acquittal appeal is limited and circumscribed. If the view adopted by the court below for acquitting the accused persons is plausible and reasonable, the appellate court cannot adopt any other plausible view to upturn the acquittal recorded by the trial court.

12 Further, the scope of the acquittal appeal under Section 378(1)(3)

of the Code is limited. The Supreme Court in the case of **Sadhu Saran Sing v/s. State of Uttar Pradesh, (2016) 4 SCC 357**, have explained this court of acquittal appeal in paragraph 20 as under :

“20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal in *Sambasivan v. State of Kerala*, (1998) 5 SCC 412 has held:

7. “ The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal, are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal.”

13 Under the circumstances, when the view adopted by the learned trial judge is plausible and the reasons and findings recorded by the learned Trial Judge to acquit the respondent cannot be said to be perverse or illegal, the learned impugned judgment of acquittal does not warrant any interference in this appeal.

14. For the foregoing reasons, the appeal fails and is hereby dismissed. The judgment and order of acquittal dated 16<sup>th</sup> January 2010 passed by learned Additional District and Sessions Judge, Anand in Sessions Case No.38 of 2009 is hereby confirmed. R & P is ordered to be remitted to the trial Court to the forthwith.

**(A.G.URAIZEE, J)**

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