

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL APPEAL NO. 1034 of 1999**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ILESH J. VORA**

**and**

**HONOURABLE MR.JUSTICE D. M. VYAS**

Approved for Reporting	Yes	No

STATE OF GUJARAT

Versus

MOHMED ISHAKBHAI USMANBHAI

Appearance:

MS JYOTI BHATT, APP for the Appellant(s) No. 1

MR SA BAQUI(141) for the Opponent(s)/Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**

**and**

**HONOURABLE MR.JUSTICE D. M. VYAS**

**Date : 29/05/2025**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. This acquittal appeal preferred by the State is directed against the judgment dated 09.06.1999 passed by the Additional Sessions Judge, Ahmedabad in Sessions Case No.288 of 1997 by which the respondent-accused has been acquitted under Sections 498(A), 304(B) and 306 of the Indian Penal Code.
2. Case of the prosecution, in short is that, the wife of the respondent accused Saynabibi, died due to burn

injuries on 05.09.1997. The deceased succumbed to her injuries on 08.09.1997. On the basis of yadi from the hospital, Gayakwad Haveli Police Station, Ahmedabad initially registered accidental death and proceeded to inquire into the matter. On 05.09.1997, immediately after the incident, deceased was taken to V.S. Hospital, Ahmedabad. The Executive Magistrate on the same day, recorded the statement of the deceased, wherein she had disclosed that while making tea on the brass primus, she suffered burn injuries due to explosion. Even in the police statement, she made a disclosure of accidental injuries. On 08.09.1997, after the passing away of the deceased at the hospital, the father PW:1 Haji Mohammad Ibrahim lodged an FIR, *inter alia* alleging that the respondent accused after the marriage had ill-treated and harassed the deceased for not bringing sufficient dowry. It was further alleged that the accused husband was in habit to consume liquor and under the influence of the liquor, the deceased was harassed mentally and physically and therefore, death occurred within 7 years of the marriage and she was died of burn injuries due to cruelty and harassment in connection with the demand of dowry. The offence under Sections 498(A) and 306 of the IPC came to be registered and thereafter, the case was entrusted to the PW:5 I.O. Dana Makwana. The I.O.,

during the course of investigation, sent the dead body for postmortem, arrested the accused, recorded the statements of witnesses, drew the panchnama of place of occurrence, sent the muddamal seized articles to FSL for further investigation and after completion of the investigation, the I.O. filed the chargesheet against the respondent accused before the Jurisdictional Magistrate, who in turn committed the case to the Sessions Court, Ahmedabad.

3. After due framing of charge and upon accused pleaded not guilty, the trial commenced before the Additional Sessions Court, Ahmedabad.
4. In the course of trial, the prosecution examined in all 6 witnesses and exhibited 9 documentary evidence in support of its case:

### **Oral evidence**

PW 1 - Exh. 14	Hajimohammed Ibbrahimibhai, Complainant
PW 2 - Exh. 16	Abidabibi Hajimohammed
PW 3 - Exh. 17	Ayeeshaben Ibbrahimibhai
PW 4 - Exh. 18	Firozbhai Hajimohammed
PW 5 - Exh. 19	Danabhai Dhanabhai Makvani, Investigating Officer
PW 6 - Exh. 20	Dharmesndrasinh Ratansinh Raol

### Documentary evidence

Exh. 15	Complaint
Exh. 6	Inquest Panchnama
Exh. 7	Panchnama of Place of Offence
Exh. 8	Dying Declaration
Exh. 9	PM Note
Exh. 10	Death Certificate
Exh. 11	Police Report
Exh. 12	Receipt of Handing over of Body
Exh. 13	Police Varghi

5. After closure of the prosecution evidence, the respondent – accused was questioned under Section 313 of the Cr.P.C. to which he stated that the allegations of harassment in connection with the demand of dowry are not true and after three days of the incident, the false case was being registered at the instance of complainant. It was further stated that the deceased sustained burn injuries due to accident as at the relevant time, while making tea on the brass primus, the same was exploded.
6. Trial court after hearing the parties and upon appreciation of the evidence, acquitted the respondent-accused from all charges observing that the prosecution miserably failed to prove the case beyond reasonable doubt by adducing cogent, acceptable and reliable evidence. The trial court while acquitting the accused, recorded that, the prosecution

failed to establish the factum of demand of dowry and there is no evidence that the deceased was being subjected to cruelty and harassment soon before her death. The Trial Court further held that this is an accidental death and the evidence of father on the aspect of harassment meted out to the deceased is not credible, reliable and acceptable.

7. In the aforesaid facts and circumstances, the State being aggrieved with the judgment of the acquittal, has come up with this appeal.
8. We have heard Ms.Jyoti Bhatt, learned APP appearing for the appellant-State and Mr.S.A. Baqui, learned counsel appearing for and on behalf of the respondent-accused.
9. Ms.Jyoti Bhatt, learned APP appearing for and on behalf of the appellant-State while assailing the impugned judgment, has submitted that, the judgment of acquittal suffers from legal infirmities, perversity and fundamental error in appreciation of evidence. That, the evidence of PW:1 has not been properly appreciated by the Court below. That the death occurred within 7 years of marriage, and as per the testimony of father and others, the deceased was subjected to cruelty and harassment by her husband

and such harassment was in connection with the demand of dowry and it is established that such cruelty and harassment was being made soon before her death. In such circumstances, the presumption as contemplated under Section 113-B shall require to be drawn against the accused that the victim was subjected to harassment in connection with the dowry. That there was no explanation or evidence in rebuttal on the part of the accused that the circumstances envisaged by Section 304(B) did not exist.

10. In such circumstances as referred above, Ms.Jyoti Bhatt, learned APP prayed that, there being merits in this appeal as the findings of acquittal are contrary to the evidence on record and same may be allowed and the accused be convicted and sentenced for the offences for which they were tried.
11. On the other hand, learned counsel appearing of the accused has supported the findings recorded by the Trial Court and contended that there is no sufficient evidence adduced by the prosecution to establish the charge of dowry death and cruelty. That the deceased was died due to accidental injuries and the entire prosecution evidence would also suggest that the deceased sustained burn injuries while making tea on

brass primus. In such circumstances, the evidence of father cannot be relied upon and his evidence is contrary to the material placed by the prosecution. In such circumstances, it is submitted that, the court below has rightly appreciated the oral as well as documentary evidence and does not committed any error either on law or facts while recording the acquittal. Thus, therefore, when view taken by the Trial Court is a possible view and the prosecution miserably failed to point out the compelling reason warranting inference in the order and judgment of the acquittal, the appeal lacks merits and may be dismissed.

12. We have considered the submissions made at the bar and perused the record and proceedings of the case.
13. Having regard to the evidence on record, and findings recorded by the Trial Court, the issue required to be considered whether the judgment of acquittal suffers from legal infirmity, perversity or fundamental error in appreciation of the evidence, that would warrant interference by this Appellate Court ?
14. Before venturing into the merits of the case, we would like to refer the scope of Section 378 of the Cr.P.C. while deciding an appeal against the judgment and

order of acquittal. The Supreme Court in its various pronouncements has persistently emphasized that there are limitations while interfering with an order against acquittal. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. The Appellate Court should bear in mind the presumption of innocence of the accused and further that the acquittal by the Lower Court bolsters the presumption of his innocence. Interference in routing manner, where the other view is possible should be avoided, unless there are good reasons for interference.

15. In the present case, so far as oral evidence is concerned, the father Haji Mohammad Ibrahmi PW:1, mother Abidabibi PW:2, grandmother Aisa Ahmed PW:3 and brother Firoz Mohammad Haji Mohammad PW:3 required to be refer to decide the issue raised by the State. The witnesses have categorically stated in their respective testimonies that, when they reached at the hospital, the deceased was in conscious state of mind and stated that while making tea on brass primus, she suffered burn injuries. The treatment of the deceased was continued for about three days and during the said three days, her statement was recorded by the Executive Magistrate



as well as PW:5 I.O. Dana Makwana. In both the statements, the deceased did not have uttered a words that she was subjected to harassment in connection with the demand of dowry by the husband and on the contrary, she made a statement that while making tea on the primus, she suffered accidental burn injuries. In such circumstances, after three days of the incident, the father changed his version and lodged a complaint inter alia alleging that deceased was ill-treated by respondent accused on the subject of insufficient dowry which is contrary to the substantial evidence led by the prosecution. It is settled position of law that when two views exists one is favourable to the accused and second one is in favour of the prosecution, the view which is favorable to the accused, should be accepted and adopted. Thus, when the deceased herself stated before the Executive Magistrate that she sustained burn injuries while making tea at home and did not allege anything further against the accused, then the oral evidence of the father and other witnesses on the aspect of harassment and unnatural death of the deceased should not rely upon. Thus, in our opinion, the evidence of the relatives of the deceased is contrary to the material particulars adduced by the prosecution and therefore, there is no reliable evidence adduced by the prosecution to prove the

facts of harassment in connection with the demand of dowry and when the prosecution failed to prove the fundamental facts of cruelty and harassment, the question does not arise to raise the presumption under Section 113-B of the Evidence Act. In such circumstances, the prosecution failed to establish that there was a demand of dowry and the deceased was being subjected to cruelty soon before death in connection with the demand of dowry. So far as alternate charge under Section 306 is concerned, there is no evidence on record that the accused had abetted the deceased to commit a suicide.

16. For the reasons recorded, the prosecution has not adduced sufficient evidence to prove the charge against the accused. On careful examination of the findings of the trial court, we do not find any compelling reason warranting interference in the judgment of the acquittal as the findings of acquittal based on the evidence on record and the view of the Trial Court is possible view which do not warrant any interference.
17. Resultantly, in absence of any compelling reasons to interference with the judgment of acquittal, this acquittal appeal preferred by the State stands **dismissed**. The bail bonds if any stands cancelled.

Surety, if any, given stands discharged. R & P to be sent tot he Trial Court concerned.

**(ILESH J. VORA,J)**

Rakesh

**(D. M. VYAS, J)**