NEUTRAL CITATION
2025:GUJHC:66323-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 457 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
RAJESHBHAI PITAMBERBHAI PARMAR & ORS.

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Appearance:
MS MAITHILI MEHTA, APP for the Appellant(s) No. 1
MR NITIN M AMIN(126) for the Opponent(s)/Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 19/11/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 22.01.2002 passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 102 of 1999, whereby the respondents accused came to be acquitted for the offences under Sections 498A, 306, 201, 176, 304B read with Section 114 of the Indian Penal Code, 1860 (IPC for short), the appellant State has preferred the present appeal under Section 378(1)(iii) of the Code of Criminal Procedure, 1973 (CrPC for short).

2. The brief facts of the case are as under:

2.1. The complainant Pushpaben Bhikubhai Mekwan (PW-4/Exh.28) lodged a complaint stating that her daughter [redacted] (deceased) was married to respondent No.1 Rajeshbhai Pitamber bhai Parmar on or about two years prior to the incident. Out of the said wedlock, the deceased had been blessed with a child. On 17.01.1999 at around 8:30 PM, at the matrimonial home in Thaledi Village, Petlad Taluka, Anand District, the deceased was subjected to physical and mental cruelty by the accused persons over a quarrel regarding feeding her minor daughter. It is stated in the complaint that the respondents were giving constant torture and cruelty to the deceased on account of dowry demands, which were routed through respondent No.4 Dahiben (sister-in-law), including demands for cash from the deceased's parental side. The deceased, unable to bear the harassment, consumed Celphos poison leading to her death during treatment at the Civil Hospital, Nadiad. Further, the accused persons, knowing the unnatural death, failed to inform the police as required under Section 176 IPC and buried the body without post-mortem examination to destroy evidence. Thus, FIR being I-C.R. No. I-21 of 1999 at the instance of the complainant came to be registered against the respondents accused at Mahuva Police Station for the aforesaid offences.

2.2. In pursuance of the complaint being I-C.R. No. I-21 of 1999 lodged by the complainant with the Mahuva Police Station for the aforesaid offences, the investigating agency started usual investigation and recorded statements of the witnesses, drew various Panchnamas (including scene of offence panchnama at Exh.67 and inquest panchnama at Exh.20) and obtained FSL Report (Exh.27) for the purpose of proving the offence. After having found sufficient material against the respondents accused, charge-sheet came to be filed in the Court of

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learned Chief Judicial Magistrate, Nadiad. Since trial of offences alleged against accused is triable exclusively before Court of Sessions, learned CJM had committed the case to Sessions Court, Nadiad as provided in Section 209 of the CrPC.

2.3. Upon committal of the case to the Sessions Court, Nadiad, learned Sessions Judge framed charge at Exh.6 against the respondents accused for the offences under Sections 498A, 306, 201 read with Section 114 IPC. The respondents accused pleaded not guilty and claimed to be tried. Subsequently, vide application under Section 216 CrPC dated 19.07.2000 (Exh.32), the prosecution sought alteration of charges to include Sections 176 and 304B read with Section 114 IPC, which was allowed by the learned Sessions Judge vide order dated 30.08.2000, and additional charges were framed under the said sections.

3. We have heard learned advocates for the respective parties and minutely examined oral and documentary evidence adduced before the learned Sessions Court. During the course of trial, the prosecution examined following witnesses. The details of the aforesaid evidence led by the prosecution are reproduced in tabular form as under:

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1.	Medical Officer Dr. Babubhai P. Parmar (examined the victim)	12
2.	Medical Officer Dr. Dineshkumar L. Madhukar (medical examination of accused)	14
3.	Medical Officer Dr. Akshay R. Shah	16

4.	Complainant – Pushpaben Bhikubhai Mekwan	28
5.	Panch witness of scene of offence – Fatabhai Chandubhai	30
6.	Panch witness of inquest panchnama – Mohanbhai Dinabhai	31
7.	Sister of the deceased – Ilaben Bhikhubhai	55
8.	Ramsingh Babubhai	57
9.	Investigating Officer P.S.I. Kakubhai Kishandas Charan	65
10.	Investigating Officer P.S.I. Rameshchandra Hiralal Panchani	69

~:: Documentary Evidence ::~

Sr. No.	**Particular**	**Exh.**
1.	Yadi sent to Medical Officer for PM of [redacted]	17
2.	Post-Mortem Report of [redacted]	18
3.	Yadi for Inquest Panchnama	19
4.	Inquest Panchnama (additional or related)	20
5.	Yadi to Executive Magistrate, Nadiad for D.D.	21
6.	Yadi to Executive Magistrate for being present at burial place of body	22
7.	Receipt of [redacted]'s body	23
8.	Muddamal forwarding note for FSL	24
9.	Letter of FSL	25
10.	Letter of FSL	26
11.	FSL Report	27

13.	B.A. Degree certificate of deceased [redacted] from Sardar Patel University	29
14.	FIR of complainant Pushpaben	66
15.	Panchnama of the scene of offence	67
16.	Dying declaration form	68
17.	Copy of Station Diary entry informing Civil Hospital Police Chowky, Nadiad	58
18.	Other documentary evidence, statements etc. in support of dying declaration	59
19.	Pursis filed by prosecution closing evidence	71

4. On conclusion of evidence on the part of the prosecution, the Sessions Court put various incriminating circumstances appearing in the evidence to the respondents accused so as to obtain explanation/answer as provided u/s 313 of the CrPC. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and a false case has been filed against them.

5. We have heard learned APP for the appellant State and minutely examined oral and documentary evidence adduced before the learned Sessions Court and heard learned advocate the respondents.

6. Learned APP for the appellant State having pointed out facts of the case and having taken this Court through both oral and documentary evidence recorded before the learned Sessions Court, would submit that the learned Sessions Court has failed to appreciate evidence in true sense

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and perspective. The learned Sessions Court was required to assess the facts that deceased committed suicide within 7 years of marriage span. He would submit that in view of settled proposition of law, learned Sessions Judge being learned Sessions Court was required to make complete and comprehensive appreciation of vital facts of the case and was required to scrutinize the evidence brought on record with due care and caution. He would further submit that perusing the evidence of the complainant PW-4/Exh.28 (mother) and PW-7/Exh.55 (sister Ilaben) and other witnesses, it indicates that they were supporting the case of the prosecution and those witnesses indicate that deceased was subjected to physical and mental cruelty. She was instigated or goaded to commit suicide by consuming Celphos poison due to dowry demands and harassment.

7. Learned APP would further submit that since presumption under section 113(A) of the Indian Evidence Act, 1872 (Evidence Act for short) spells that if deceased commits suicide within 7 years of her marriage span, she had been put to cruelty at the hands of her husband and /or relative of her husband, the Court has to presume having regard to other circumstances of the case that suicide was abetted by her husband or relative of husband.

8. Learned APP taking us through impugned judgment would submit that learned Sessions Court has not addressed this issue in its true perspective. He would further submit that learned Sessions Court has not given reasons that why presumption envisaged under section 113(A) of the Evidence Act is not operating in the present case, since deceased committed suicide within 7 years of her marriage span. Thus, impugned judgment suffers from manifest error. He would further submit that though allegations of cruelty and harassment are not by direct evidence, but indirect evidence on record indicates that deceased was harassed at

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the hands of accused who are husband and in-laws of the deceased. He would submit that dying declaration process was initiated (Exh.21, 68), but could not be completed as deceased died immediately after. He would submit that overall circumstances indicate that deceased was subjected to cruelty and harassment. She was abetted to commit suicide at the hands of in-laws and as such offence under section 498A read with section 306 IPC was made out but the learned Sessions Judge failed to appreciate this aspect correctly. He would further submit that accused buried the body without PM (evidenced by Exh.22, 23) and failed to inform police (Exh.58), attracting Sections 201 and 176/114 IPC. Thus, he submits that in totality of circumstances and on appreciation of evidence, the appeal deserves consideration and requires to be allowed. Having submitted so he urges to allow this appeal and quash the impugned judgment and to convict the accused for the offence under sections 498A, 306, 201, 176, 304B read with section 114 IPC and to pass appropriate punishment.

9. On the other hand, learned advocate Mr. Nitin M. Amin for the respondents original accused would submit that scope of acquittal appeal is very narrow and subtle. He would further submit that even if two views are possible, the view which has been recorded by learned Sessions Court acquitting accused must be given credence as by said view presumption of innocence inherently runs in favour of the accused has been doubled. He would submit that relatives who were examined by the learned Sessions Court did not support the case with regard to allegations of cruelty and harassment in specific instances. He would further submit that the FSL Report (Exh.27) confirms Celphos poisoning, but no direct link to abetment is established, and the scene panchnama (Exh.67) shows no signs of foul play by accused. Learned advocate Mr. Amin submitted that this was first information post-incident indicating accidental or self-inflicted consumption without external instigation, and witnesses like

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panchas PW-5/Exh.30 and PW-6/Exh.31 turned hostile or did not corroborate harassment. In that circumstances, and having considered other circumstances, whereby none of the witnesses spoke of alleged harassment and cruelty meted out to the deceased with specificity, learned Sessions Court has rightly acquitted the accused. He would further submit that acquittal of the accused is recorded by fairly reasoned judgment, it does not require interference and hence, he submits to dismiss this appeal.

10. Regard being had to rival submissions of both the sides, there is no gainsay that if deceased commits suicide within span of 7 years of marriage, section 113(A) of the Evidence Act comes into play. In order to understand scope and applicability, let us refer to section 113(A) of the Evidence Act, which reads as under:-

> *"113A. Presumption as to abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*

11. It is cardinal rule that whenever principle of presumption applies in the statute and certain facts said to have been presumed, such presumption is always rebuttable. Accused is not required to lead evidence beyond reasonable doubt to rebut presumption. The person who is burdened to disprove presumption can discharge presumption by leading evidence in the nature of preponderance of probability.

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12. Bare reading of section 113(A) of the Evidence Act indicates that along with rule of presumption, legislature has employed expression having regard to other circumstances of the case. It means that presumption which is slated in section 113(A) is subject to other circumstances of the case, so merely on presumption the Court cannot convict the accused. The expression stated herein above makes presumption as discretionary.

13. With profit, in this regard, we may refer to the observation of Hon'ble Supreme Court in the case of **Mangat Ram v/s. State of Haryana [AIR 2014 SC 1782]** which reads as under:-

> *"The mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband would indicate that the presumption is discretionary."*

14. The prosecution to invoke rule of presumption under section 113(A) of Evidence Act is obliged to prove that deceased wife was subjected to cruelty as defined under section 498A of IPC. If it does not establish that deceased had been subjected to cruelty at the hands of her husband or relatives, section 113(A) is not applicable. Thus, the prosecution in order to succeed in invoking presumption under section 113(A) of the Evidence Act first is required to establish cruelty meted to deceased which leads to conviction under section 498A of IPC. In

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absence thereof, there is no reason to invoke rule of presumption under section 113(A) of the Evidence Act independently. In **Ramesh kumar v/s. State [(2001) 9 SCC 618]**, the Hon'ble Supreme Court has held as under:-

> *"Under section 113A, it must be shown that (i) the woman has committed suicide (ii) such suicide has been committed within a period of seven years from the date of her marriage (iii) the husband or his relatives, who are charged had subjected her to cruelty. The Court then may presume that such suicide had been abetted by her husband or his relatives. The presumption is not mandatory. It is only permissive. The existence of aforesaid three circumstances shall not, like a formula enable the presumption being drawn. The Court must have regard to all the other circumstances before presumption is drawn. A consideration of all other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide. The presumption is rebuttable one. The evidence of the offence or circumstances available on record may destroy the presumption."*

15. Since it is admitted fact that deceased died within 7 years of her marriage span, in background of above proposition of law, the issue arises whether the prosecution has proved that deceased was subjected to cruelty or harassment as defined under section 498A of IPC.

16. Threadbare analysis of the evidence led by prosecution has been done by learned Sessions Judge. The prosecution has examined complainant Pushpaben Bhikubhai Mekwan (PW-4/Exh.28) who is real mother of the deceased. According to her chief examination, the deceased confided in her about dowry demands and physical/mental harassment by accused, including beatings and taunts over household chores and cash demands via sister-in-law (respondent No.4). Apart from this statement,

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she deposed specific instances, such as the quarrel on 17.01.1999 over feeding the child and prior demands. However, in cross-examination, her testimony was subjected to contradictions regarding exact dates and amounts, rendering it partly hearsay and general.

17. Ilaben Bhikhubhai (PW-7/Exh.55) real sister of the deceased was examined. Perusing her chief examination, she deposed about visiting the matrimonial home and witnessing quarrels over dowry non-fulfillment and household work, including an incident where deceased was scolded for not preparing rotis properly. In cross-examination, she admitted certain contradictions i.e. in the police statement she has not stated specific beating by respondent No.3 (mother-in-law). She has also admitted other contradictions regarding frequency of visits. Such admission by the witness goes to root of the case.

18. Another witness examined was Fatabhai Chandubhai (PW-5/Exh.30) panch witness at scene of offence. Though this witness stuck to her police statement, it does not indicate nature of cruelty or harassment said to have been extended to deceased as stated in section 498A of IPC with specificity; he merely confirmed recovery of poison container. Other witnesses like PW-6/Exh.31 (panch for inquest) also deposed with regard to general procedure, but none of them have spoken about incident of harassment or cruelty which compelled deceased to commit suicide. Medical evidence (PW-1/Exh.12, PW-2/Exh.14, PW-3/Exh.16; Exh.18 PM Report) confirms death by Celphos poisoning, but no external injuries indicative of recent assault.

19. Section 498A of IPC defines cruelty which reads as under:-

"498A. Husband or relative of husband of a woman subjecting her to

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cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, cruelty means — (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

20. The expression wilful conduct and harassment to coerce her are two important aspects appearing in section 498A to decide that element of cruelty and harassment. The sporadic incident of ill-treatment by husband or her relatives does not fall within the expression of cruelty stated in clause (a) and harassment in clause (b) with view to coerce her. The conduct of accused i.e. her husband and /or near relatives must be wilful and there is likelihood that such wilful conduct will result in committing suicide or would be danger to life, limb or health of the woman.

21. In **Indrasingh M. Raol v/s. State of Gujarat 1999(3) GLR 2536**, this Court has dened and explained the expression cruelty and harassment in context to Sec.498A & 306 of the IPC. Relevant paragraph is para-6 & 7 which read as under :

"6. The expression "cruelty" means and implies harsh & harmful conduct of certain intensity and persistence. It, therefore, covers the acts causing both physical and mental agony and torture, or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miseries & woes strongly stirring up her feeling that life is now not worth living and she should die, being the only option left. The provision of Sec. 498A therefore, envisages intention to

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drag or force the woman to commit suicide by unabetted, persistent & grave cruelty. In one case, therefore, the facts on record may constitute the cruelty showing required intention and in another case, it may not. The concept of cruelty, therefore, is found different or diversifying from place to place, individual to individual, and also according to social and economical status of the person and several other factors. The Court has, therefore, to becoming more heedful, chary & wary, exert and ascertain the cruelty & required intention on the basis of materials on record and also on the basis of the culture, ordinary sentimentality or sensitivity, capacity to tolerate, temperament, tendency, interse honour, matrimonial relationships, state of health, dissension, interaction, or conflicting ideology, will to dominate, utter disregard of one's own obligation or intractability or habits as well as customs & traditions governing the parties and other governing forces, provided necessary acceptable evidence in this regard is available on record.

7. The word "harassment" is not defined in Sec. 498A. The meaning of the word "harass" which can be found from the dictionary is to subject someone to unbearable, continuous or repeated or persistent unprovoked vexatious attacks, questions, demands, or persecutions, or brutality, or tyranny, or harm, or pain, or affliction, or other unpleasantness, or grave annoyance, or troubles. In short what can be said is that Sec. 498A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely usual wear and tear of matrimonial life. It should hardly be stated that the prosecution has to establish the charge beyond reasonable doubt. No doubt arithmetical accuracy is not expected from the prosecution, but it has to adduce such evidence which would be credible leaving no room to any reasonable doubt; and pointing to the guilt of the accused."

22. In **Manju Ram v. State, (2009) 13 SCC 330**, Hon'ble Supreme Court has explained the meaning of Cruelty in following terms:-

"Cruelty for the purpose of section 498A, IPC is to be established in the context of sec.498A, IPC as it may be different from other statutory

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provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity of seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. it is to be established that the woman has been subjected to cruelty continuously/persistently or atleast in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as cruelty to attract the provisions of sec.498A, IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

23. In earlier decision in the case of **V.Bhagat v. D.Bhagat, AIR 1994 SC 710** the Hon'ble Supreme Court in regard to word cruelty has observed following:-

"The context and the setup in which the word cruelty has been used in the section, seems...., that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."

24. The cruelty therefore has to be understood in its ordinary sense of the matrimonial terms, yet general wear and tear of matrimonial life or vague allegations having no mentioning of specific incident of demand of dowry by the accused or hostile attitude of husband and/or his relatives cannot be termed as cruelty. Differences arising, momentarily between husband and wife also cannot be construed as cruelty or harassment. In order to establish and prove cruelty as stated in section 498A of the IPC, it must be in nature that it is arising from wilful conduct and it is intended to harm, harass or hurt the victim.

25. In the background of above law if we re-examine the evidence on record, what appears that no specific incident of cruelty or wilful conduct

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of the accused are narrated by any of the witnesses with unassailable corroboration. Even such ingredients are missing in FIR (Exh.66) in precise detail. There are general allegations of beatings and demands, but when, why and for what circumstances or for what exact demand, nothing is coming on record by way of independent evidence. Also at no point of time, dispute between husband and wife arose or atleast surfaced on record with medical corroboration. The PM Report (Exh.18) shows no ante-mortem injuries from assault. Thus neither direct nor inferential evidence regarding cruelty appears or proved by the prosecution beyond reasonable doubt. The FSL Report (Exh.27) confirms Celphos, but self-administration without abetment is equally possible.

26. Insofar as allegations of offence under section 306 of IPC is concerned, it is necessary to read section 306 with section 107 of IPC. Section 306 of IPC reads as under:-

> "*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.*

26.1 What is abetment of thing has been described in section 107 of IPC, which reads as under:

> *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*

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Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing."

27. Plain reading of section 306 with section 107 of IPC indicates that there must be some nexus between suicide of the victim and alleged offensive acts of the accused. In other words, prosecution is required to prove offensive acts of accused, which drive deceased to commit suicide. In addition thereto, there should be proximity of offensive acts, which led deceased to commit suicide. In the case of **Wazir Chand vs. State [AIR 1989 SC 378]**, Hon'ble Supreme Court has held as under:-

> *"Reading sections 306 and 107 together, it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under section 306 for abetting the commission of suicide. A plain reading of the provisions shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide."*

28. When offence of 498A is added with offence of section 306 of IPC prosecution is obliged to prove that cruelty was meted out to the deceased being result of wilful conduct of accused and same has driven deceased to commit suicide. Prosecution is also burdened to prove proximity and/or nexus between cruelty and act of suicide.

29. The stray domestic quarrels perfunctory abuses by husband or in-laws are common in Indian society. Crude and uncultered behaviour by the husband towards his wife being mundane would not form and constitute abetment unless these acts or conduct singly or cumulatively are found to be of such formidable and compelling nature as may lead to commission of suicide. Abetment is mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a

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positive act on the part of the accused to instigate or aid in committing suicide, accused cannot be convicted under section 306 of IPC.

30. In *Ramesh Kumar (supra)* the Hon'ble Supreme Court observed regarding instigation as under:-

> *"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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.*
>
> *30.1 Close reading of evidence on record does not indicate any instigation on the part of the accused which driven the deceased to commit suicide. There is no active role played by the accused which is proved by the prosecution which may establish instigation or abetment for committing suicide."*

31. It is important to note that deceased consumed Celphos poison and according to evidence of prosecution, she was not able to speak properly. Deceased had given her first statement post incident which is attempted dying declaration (Exh.68) indicates that she consumed poison due to family pressure, but it remains incomplete and uncorroborated by independent witnesses. This is evidence produced by the prosecution itself, but lacks voluntariness certification.

32. Re-appreciation of evidence as above, in background of facts of the case indicates that learned Sessions Court has rightly but flawlessly

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appreciated evidence. Learned Sessions Court has also applied provision of law correctly. In overall, it is found that learned Sessions Court has not committed error to reach to the conclusion of acquitting the accused. Insofar as Sections 201, 176 and 304B/114 IPC are concerned, the evidence of IOs (PW-9/Exh.65, PW-10/Exh.69) shows that accused delayed informing police and buried the body hastily (Exh.22, 23), but this is rebutted by their explanation of cultural/religious haste in burial and lack of intent to destroy evidence, as PM was eventually conducted exhumation-wise (Exh.18). No direct proof of knowledge of suicide abetment at burial time. For 304B, dowry death requires proof of demand soon before death, which remains general without specifics.

33. Scope of interference in acquittal appeal is well settled. In the case of **Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280**, Supreme Court has held as under:

> *"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."*

34. As observed by the Hon'ble Supreme Court in the case of **Rajesh Singh & Others v. State of Uttar Pradesh reported in (2011) 11 SCC 444** and in the case of **Bhaiyamiyan Alias Jardar Khan and Another**

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v. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned Special Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned Special Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

35. It can be noticed that cardinal principles of criminal jurisprudence behold that in an acquittal appeal, even if two views are possible, the view taken by the learned trial Court cannot be substituted by reversing the acquittal into the conviction unless finding of the learned trial Court found to be perverse, or could to have been said contrary to the material on record or demonstrably wrong or unsustainable and manifestly erroneous [See: **Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225**].

36. Before parting with this judgment I may refer to recent decision of the Hon'ble Supreme Court in the case of **Fedrick Cutinha v/s. State of Karnataka rendered on 18.04.2023 in Criminal Appeal No.2251 of 2010**, whereby, the Hon'ble Supreme Court has recapitulated the power of Appellate Court in interfering with the acquittal appeal. Para 13 of the said decision, which is relevant, reads as under:-

> *"13. There is no room to doubt the powers of the appellate court and that it has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. However, the appellate court has to bear in mind that in case of acquittal there is double presumption of innocence in favour of the accused. First, the presumption of innocence is available to all accused under the criminal jurisprudence as every person*

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is presumed to be innocent unless proved to be guilty before the competent court of law. Secondly, the accused having secured the acquittal, the presumption of their innocence gets further reinforced and strengthened. Therefore, the appellate court ought not to lightly interfere with the order of acquittal recorded by the trial court unless there is gross perversity in the appreciation of the evidence and even if two views are possible, it should follow the view taken by the trial court rather than choosing the second possible version."

37. In the instant case learned APP could not able to point out that how the finding recorded by the learned Sessions Court is patently illegal, perverse or contrary to the material on record or against the settled principles of law or his palpably wrong or manifestly erroneous.

38. The incident that immediately preceded the deceased consuming poison was trivial and formed part of the ordinary wear and tear of matrimonial life. The substance of the complaint and the dying declaration (Exh.68) itself reveals that on the fateful day the mother-in-law and husband of the deceased were proceeding to Santram Mandir at Nadiad for darshan. The deceased insisted on accompanying them, but was not permitted. Hurt by this refusal, she consumed poisonous substance (Celphos). A mere refusal to allow the wife to accompany the in-laws to a temple cannot, by any stretch of imagination, be construed as wilful conduct of such nature as is likely to drive a woman to commit suicide within the meaning of the Explanation (a) to Section 498-A IPC, nor does it constitute harassment with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security under clause (b) thereof.

39. No evidence whatsoever has been brought on record to show that soon before her death the deceased was subjected to cruelty or harassment in connection with any demand for dowry as required under

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Section 304-B IPC. The allegation of demand of additional dowry is conspicuously absent from the First Information Report (Exh.66) lodged by the mother of the deceased (PW-4, Pushpaben). This allegation surfaces for the first time during the evidence of the complainant and her other daughter (PW-7, Ilaben). Such subsequent embellishment and improvement renders the prosecution case on the question of dowry demand wholly unreliable. In the absence of proof of "dowry demand soon before death", the mandatory presumption under Section 113-B of the Indian Evidence Act cannot be drawn, and the offence under Section 304-B IPC is not established.

40. The prosecution has utterly failed to prove cruelty within the meaning of Section 498-A IPC. Apart from the solitary incident of refusal to take the deceased to the temple, no specific instance of physical or mental cruelty has been established through any independent or corroborative evidence. There is no evidence of recurring ill-treatment, beating, starvation or persistent harassment. The contradictions between the testimony of the mother (PW-4) and the sister (PW-7) on vital aspects of alleged dowry demand and the manner of harassment further erode the credibility of the prosecution case.

41. In the absence of proof of cruelty under Section 498-A IPC, the discretionary presumption of abetment of suicide under Section 113-A of the Indian Evidence Act cannot be pressed into service. Even otherwise, the material on record does not disclose any active instigation, intentional aiding or engagement in a conspiracy by any of the accused that directly led the deceased to commit suicide (Section 107 IPC). The act of the deceased in consuming poison appears to be a spontaneous reaction born out of her own sensitivity rather than any positive act of abetment on the part of the accused persons. Mere hurt feelings arising from a trivial

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domestic disagreement do not constitute abetment of suicide under Section 306 IPC.

42. The conduct of accused No.1 (husband) in immediately rushing the deceased to the hospital after she consumed poison clearly negatives any intention on his part to cause her death or to abet the extreme step. This act is wholly inconsistent with the theory of abetment.

43. So far as the offence under Section 201 IPC is concerned, the accused proceeded with the funeral rites under a bona fide belief that the death was suicidal and not homicidal, and in accordance with religious customs requiring early cremation/burial. The body was subsequently exhumed and post-mortem conducted (Exh.18). There is no evidence to show that the accused caused disappearance of evidence with the specific intention of screening themselves from legal punishment knowing or having reason to believe that an offence punishable with death or imprisonment for life had been committed.

44. The charge under Section 176 read with Section 114 IPC also fails for want of proof that the accused had knowledge or reason to believe that an enquiry under Chapter XII CrPC was likely or obligatory and yet intentionally omitted to give information to the nearest police station.

45. The reasons stated herein above indicate that no case is made out by the appellant State warranting interference with the impugned judgment and order of acquittal.

46. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field

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after considering various earlier judgments and held as below: -

> *"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*
>
> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

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47. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

> *"8.1. The acquittal of the accused further strengthens the presumption of innocence;*
> *8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
> *8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
> *8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
> *8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*

48. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned trial Court, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP