

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1029 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY Sd/-**
and**HONOURABLE MR.JUSTICE D. M. VYAS Sd/-**

=====

Approved for Reporting	Yes	No

=====

STATE OF GUJARAT
Versus
PARESH SHANTILAL & ORS.

=====

Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 1,2,3

=====

CORAM: HONOURABLE MR. JUSTICE CHEEKATI
MANAVENDRANATH ROY
and
HONOURABLE MR.JUSTICE D. M. VYAS

Date : 27/06/2025**ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY)**

1. Assailing the judgment dated 28.5.2014 rendered in Sessions Case No.8 of 2014 on the file of learned Additional Sessions Judge, Morbi, whereby accused nos.1 to 3 in the said case were acquitted of the charges under Sections 498-A, 306, 304-B and 114 of the Indian Penal Code, 1860 read with Sections 3 and 7 of the Dowry Prohibition Act, the instant appeal has been preferred by the State.



2. Briefly stated, it is the case of the prosecution that Ms.Harshaben (herein after called as “deceased”) is the legally wedded wife of accused no.1. Their marriage was solemnized about four years prior to her death. They are blessed with a son by name Vansh, aged about one and a half years, during their lawful wedlock. The deceased was pregnant of two months at the time of her death. There was strained relationship between the deceased and her mother-in-law, who is accused no.3. Accused no.1 used to harass her at the instance of accused no.3. Even on the previous day of her death, accused no.1 beat her at the instance of accused no.3. Accused nos.1 to 3 used to harass her demanding additional dowry from her. As she could not satisfy said demand, accused no.1 called her mother to come to the house and take back his wife. So her mother, who is examined as PW-1 in this case, along with her son, PW-5, came to the house of the accused to take her back. On 24.10.2013, it is stated, that there was a quarrel between the deceased and her mother-in-law, who is accused no.3, relating to the food that was prepared on that day. Unable to bear said harassments, the deceased immediately went into a room at about 11 a.m. on that day and poured kerosene on her and set herself ablaze. Immediately, her mother and brother, who are PW-1 and PW-5, and her husband, who is accused no.1, took her to Vankaner Hospital. After giving preliminary treatment, she was referred to the Government Hospital of Rajkot. She was admitted in the said hospital. On the requisition given by the concerned doctor, PW-8, who is Executive Magistrate reached the hospital and recorded statement of the injured at about 3.45 p.m. on that day. She stated in her statement that both her husband, who is

accused no.1, and mother-in-law, who is accused no.3 were harassing her and on that day also that there was a quarrel between her and her mother-in-law, accused no.3, and unable to bear the harassment meted out by her at their hands that she went into a room and poured kerosene and set herself ablaze. Thereafter, she died on the same day i.e. 24.10.2013 at 5 p.m. in the evening. Postmortem examination was held over her dead-body on the same day at about 07.45 p.m. and the doctor, who conducted autopsy over her dead-body opined that she died out of shock due to extensive burn injuries. Postmortem report was issued to that effect.

3. On the next day i.e. 25.10.2023, her mother, PW-1 lodged report with police. Police registered a case for the offences punishable under Sections 498-A, 306, 304-B and 114 of IPC read with Sections 3 and 7 of the Dowry Prohibition Act. The case was investigated. Eventually, on completion of investigation, charge-sheet was filed against accused no.1 to 3 for the aforesaid offences.

4. After the case was committed by the committal Court to the Court of Sessions division, it was made over to learned Additional Sessions Judge, Morbi, for trial. The trial Court framed charges under Sections 498-A, 306, 304-B and 114 of IPC read with Sections 3 and 7 of the Dowry Prohibition Act. The accused denied said charges and claimed to be tried.

5. During the course of trial, ten witnesses were examined and eighteen exhibits were marked to substantiate the case of the prosecution against the accused.

6. At the culmination of the trial, after considering the evidence on record, and on appreciation of the same, learned trial Judge found the accused not guilty for any of the charges levelled against them and acquitted them of the said offences.

7. Aggrieved, State has preferred the instant appeal questioning the legality and validity of the impugned judgment of acquittal. When the appeal came up for hearing before this Court, we have heard learned Additional Public Prosecutor, Mr.Bhargav Pandya at length. Despite service of notice of rule on respondent nos.1 to 3, for the reasons best known to them, none appeared in this appeal. So, in order to give a fair opportunity to them, on 23.6.2025, we have adjourned the matter to this day for hearing. Even today also, none appeared for them. As it is an old appeal of the year 2014 and it is listed under the caption "critically old matters" before us for final hearing, we are not inclined to adjourn the matter and we have decided to dispose of the appeal, after going through the material available on record, on merits.

8. We have meticulously gone through the record and the evidence.

9. As regards the offence under Section 304-B is concerned, it pertains to dowry death. Section 304-B reads thus:-

"Section 304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called

"dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

10. A bare perusal of the aforesaid Section makes it manifest that in order to prove the offence of dowry death, the predominant requirements to be established are (i) the death of a woman should be caused by any burns or bodily injury, or should occur otherwise than under normal circumstances, (ii) the said death in the above circumstances shall take place within seven years of the marriage, (iii) it must be shown that soon before her death that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) and the said cruelty or harassment must be for or in connection with any demand for dowry. It is only upon proof of the aforesaid requirements, it is to be held that an offence of dowry death is committed. As per the explanation appended to the aforesaid Section, the expression "dowry" shall have the same meaning as defined in Section 2 of the Dowry Prohibition Act.

11. Even to attract the presumption of Section 113-B of the Indian Evidence Act to prove an offence of dowry death, as contemplated under Section 304-B of IPC also, it must be shown that soon before her death that such woman was subjected to cruelty or harassment for or in connection with any demand for dowry, then only a presumption that accused caused dowry death can be invoked.

12. Thus, a conjoint reading of both Sections 304-B of IPC and Section 113-B of the Indian Evidence Act makes it manifest that the prosecution has to invariably prove that there was cruelty or harassment caused to the woman within seven years of her marriage and, more particularly, that the said cruelty or harassment was caused for or in connection with any demand for dowry. Every harassment, which is not relating to demand for dowry, will not come within the purview of the offence of dowry death as contemplated under Section 304-B of IPC.

13. In the instant case, though PW-1, who is the mother of the deceased lodged FIR stating that the accused has harassed the deceased for additional dowry and unable to bear the said harassment that the deceased committed suicide, it is pertinent to note here that she did not support the said prosecution version in her evidence given in the Court. In fact, she has turned hostile and shown her *volte-face* to the prosecution. As can be seen from her deposition, she did not depose that any of the accused herein has harassed the deceased with any demand for dowry or for any valuable security or any property. Even PW-2, who is the father of the deceased, PW-3, the brother of the deceased, PW-4, the maternal uncle of the deceased, PW-5, the brother of the deceased also turned hostile and they did not depose that the accused herein have subjected the deceased to cruelty or harassment by making any demand for dowry. Therefore, there is absolutely not even an iota of evidence on record to prove that the accused made any illegal demand for dowry or that they have subjected the deceased to cruelty or

harassment for or in connection with any such demand for dowry. Therefore, the basic prerequisites that are essential for the purpose of proving the offence under Section 304-B of IPC are conspicuously absent in this case and they are not proved by the prosecution against the accused. So no presumption under Section 113-B of the Indian Evidence Act can be invoked in the given facts and circumstances of the case. So, we have no hesitation to hold that the prosecution has failed to prove the offence punishable under Section 304-B of IPC.

14. Learned APP has made an effort by strenuously contending that there is a dying declaration of the deceased available in this case and it was recorded by PW-8, who is Executive Magistrate, and that she stated in her dying declaration that as her mother-in-law, who is accused no.3, has harassed her and quarreled with her that the deceased committed suicide by setting herself ablaze and this dying declaration is sufficient to prove that she was subjected to harassment to prove the offence under Section 304-B or under Section 306 of IPC.

14. We have meticulously gone through the dying declaration of the deceased, which was recorded by the Executive Magistrate, examined as PW-8. She has stated in her dying declaration that there was a quarrel between her and accused no.3, who is her mother-in-law, on that day relating to the food prepared and she went to her room and poured kerosene on herself and set herself ablaze and that, on the previous day night her husband, who is accused no.1 beat her at the instance of accused no.3. It is significant to note here that she

did not say in her dying declaration that the accused demanded any dowry from her and that they harassed her or subjected her to cruelty for or in connection with any such demand for dowry. Therefore, it is not at all the version of the deceased, as can be seen from the dying declaration that she was subjected to cruelty for or in connection with any demand for dowry. Therefore, the predominant requirement, which is essential to prove the offence under Section 304-B is not established even from her dying declaration. Her statement in dying declaration, at best, only proves that there are some family bickerings between her and her mother-in-law and also with her husband. Every petty instance and family bickerings, which are common in any family life, cannot be construed as harassment made in connection with demand for dowry. To prove an offence under Section 304-B, as discussed supra, there must be definite evidence relating to harassment caused in connection with demand for dowry. As the same is not established even from the dying declaration of the deceased, it is of no any use to the prosecution to establish its case against the accused for the offence under Section 304-B of IPC. There is absolutely no whisper at all regarding harassment caused for dowry in the dying declaration.

15. As regards the offence under Section 306 of IPC is concerned, the facts of the case show that admittedly none of the accused abetted her to commit suicide. It is the deceased, who went into her room after a quarrel took place between her and her mother-in-law, relating to the food prepared on that day, and at the spur of the moment, she poured kerosene on herself and set herself ablaze. So it is not a case where any of

the accused has abetted her to commit suicide. The required ingredients under Section 107 of IPC regarding intentional instigation given by the accused to the deceased to commit suicide or aid are not established in this case. Even though she has committed suicide within seven years of her marriage, to invoke even the presumption under Section 113-A of the Indian Evidence Act, again the same requirements relating to harassment said to have been caused in connection with any demand for dowry, valuable security or property are to be proved. A perusal of Section 113-A of the Indian Evidence Act makes it clear that when a woman commits suicide within seven years of her marriage, and if it is shown that her husband or his relative has subjected her to cruelty then the Court may presume having regard to all other circumstances that such suicide was abetted by her husband or his relatives. Explanation appended to Section 113-A of the Indian Evidence Act also clearly mandates that the expression "cruelty" shall have same meaning as in Section 498-A of IPC. Explanation to Section 498-A says that any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to her life or limb, or any harassment of the woman, with a view to coerce her or any person relating to her to meet any unlawful demand for any property or valuable security would constitute an act of cruelty. If the facts of the case are considered, even as per the statement given by the deceased in her dying declaration, it does not satisfy the definition of "cruelty" as envisaged in Section 498-A of IPC. No such willful conduct of such kind exhibited by the accused is established in this case. If the deceased, either because of her sensitive mind or of weak

nature or emotional temperament, takes extreme decision of putting an end to her life in the normal family bickerings that took place in the house, accused cannot be attributed with said conduct, so as to hold them responsible for the offence of abetment to commit suicide, as required under Section 306 of IPC. Therefore, the offence under Section 306 is also not proved and established in this case by the prosecution.

16. For the same reasons assigned supra, as there is no evidence of subjecting the deceased to any cruelty or harassment, with demand for dowry, valuable security or property, no offence under Section 498-A of IPC is also made out from the facts of the case. For the same reasons, offence under Sections 3 and 7 of the Dowry Prohibition Act is also not established.

17. Therefore, the learned trial Court, after considering the evidence on record and on proper appreciation of the same arrived at a right conclusion and recorded a finding of acquittal in favour of the accused. Upon considering the evidence and on reappraisal of the same, we also found that no case is made out for any of the charges levelled against the accused and that the impugned judgment of the trial Court is perfectly sustainable under the law. So it calls for no interference in this appeal. Ergo, the appeal is liable to be dismissed.

18. Resultantly, the appeal is dismissed. The impugned judgment dated 28.5.2014 rendered in Sessions Case No.8 of 2014 on the file of learned Additional Sessions Judge, Morbi, acquitting the respondents-accused, is hereby confirmed.



Record and Proceedings, be sent back to the trial Court concerned forthwith.

Sd/-
(CHEEKATI MANAVENDRANATH ROY, J)

Sd/-
(D. M. VYAS, J)

R.S. MALEK