

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 228 of 2013

FOR APPROVAL AND SIGNATURE:

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

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Approved for Reporting	Yes	No

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STATE OF GUJARAT

Versus

HEMENDRA HARISHBHAI LODHIYA &amp; ORS.

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Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1

MR ASHISH M DAGLI(2203) for the Opponent(s)/Respondent(s) No.  
1,2,3,4,5,6

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

Date : 02/07/2025

## ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH  
ROY)

1. This appeal arises out of the judgment dated 30/10/2012 passed in Sessions Case No.16 of 2010 on the file of the learned District and Sessions Judge, Porbandar whereby the respondents-accused were acquitted of the charges for the

offences punishable under Sections 498(A), 304(B), 306 and 114 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2. It is the case of the prosecution that the deceased by name Palakben (hereinafter referred to as 'the deceased') is the legally wedded wife of A-1. Their marriage was solemnized on 08/02/2004. They are blessed with one baby girl during their lawful wedlock. It is stated that after the marriage, her husband who is A-1 and his family members who are A-2 to A-6 who are all his parents and sisters etc. have subjected her to cruelty by harassing her. So, unable to bear the said harassment that she has committed suicide by consuming acid on 20/05/2006 at 8:30 p.m. in the house of the accused. Thereafter, she was taken to the hospital and postmortem examination was held over her dead body. The doctor opined that she died because of cardiac respiratory failure due to taking poison. Her father who is examined as PW-8, lodged a report with the police and it was registered as a case under Sections 498(A), 304(B), 306 of the Indian Penal Code against the accused. It was investigated and on completion of the investigation, the charge sheet was filed

against the accused for the aforesaid offences.

3. In the trial court, charges under Sections 498(A), 304(B), 306 and 114 of the Indian Penal Code were framed against the accused. They denied the charges and claimed to be tried.

4. During the course of the trial, the prosecution got examined PW-1 to PW-20 witnesses and got marked 26 exhibits to substantiate its case against the accused.

5. At the end of the trial, after considering the evidence on record and on appreciation of the same, the trial court found the accused not guilty for the aforesaid offences and acquitted them of the said charges.

6. Feeling aggrieved by the said judgment of acquittal, the State has preferred the present appeal challenging the legality and validity of the said judgment of acquittal.

7. When the appeal came up for hearing, we have heard

learned APP Mr. Bhargav Pandya for the appellant-State and learned advocate Mr. Viral Vyas appearing for learned advocate Mr.Ashish Dagli for the respondents-accused.

8. The marital relationship between A-1 and the deceased is not in dispute. Their marriage was solemnized on 08/02/2004. The fact that the deceased committed suicide on 20/05/2006 is also not in controversy. Therefore, admittedly, her suicidal death took place within seven years of her marriage. It is the case of the prosecution that the accused have subjected her to cruelty and harassed her and unable to bear the said harassment that she committed suicide and died on 26/08/2006.

9. It is well settled law that in order to prove the case under Section 304(B) of the Indian Penal Code, relating to a dowry death, it must be shown that (1) the female person died either because of burn injuries or any bodily injuries or under unnatural circumstances, (2) the said death must be within seven years of marriage and (3) soon before her death, it must be shown that she was harassed for dowry or in connection

with any demand for dowry.

10. In the instant case, although it is the specific case of the prosecution that the accused have harassed the deceased demanding money from her, there is absolutely no evidence on record to prove that she was subjected to any such harassment by the accused with any demand for money as alleged by the prosecution. All the material witnesses who are examined as PW-8, PW-9 to PW-13, who are the father of the deceased, maternal uncle of the deceased and his wife and brother of the deceased and paternal aunt of the deceased including PW-12, the neighbour of the accused turned hostile to the prosecution case and did not support the prosecution case. None of them including the father of the deceased deposed that the accused harassed the deceased for money or dowry or for any valuable security or property.

11. It is only PW-18, who is the mother of the deceased, has stated that the accused harassed the deceased but she also did not depose that the said harassment was in connection with any demand for dowry or money. She only stated that

she was harassed. But the details relating to the said harassment and whether the said harassment is in connection with the dowry or for money is not stated by her. It is only a vague allegation. Therefore, her evidence is also not of any use for the prosecution to establish that the deceased was subjected to any cruelty or harassment for dowry or in connection with the dowry. So, there is no valid evidence on record to establish the said material fact to prove an offence under Section 304(B) of the Indian Penal Code or under Section 498(A) of the Indian Penal Code.

12. Even though the deceased has left a suicide note and her dying declaration is also recorded by the Executive Magistrate, there is nothing to indicate either in the said suicide note or in the dying declaration that she was harassed for dowry or in connection with any dowry or valuable security or property by the accused. It is only stated by her that there used to be a regular quarrel between her and the accused relating to food and other household issues. It is settled law that every petty quarrel, family bickerings which are usual in any family life by itself cannot be construed as a

harassment caused for dowry or in connection with the dowry or for any property. Therefore, even the suicide note and the dying declaration of the deceased is also not proving or establishing the fact that she was subjected to any such harassment or cruelty for or in connection with the dowry as required under the law to prove the offences under Sections 304 (B) and 498(A) of the Indian Penal Code. The necessary legal requirements to prove the said offences are not established in this case.

13. If a married woman commits suicide on account of usual family bickerings and petty quarrels that take place in the family, either because of her weak mind or emotional nature, the family members of the matrimonial home cannot be held responsible for any offences punishable under Sections 304(B) or 498(A) of the Indian Penal Code.

14. The facts of the case do not even constitute any offence punishable under Section 306 of the Indian Penal Code also. Admittedly, there is no intentional instigation or aid given by the accused as required under Section 107 of the Indian Penal

Code to constitute an offence of abetment to commit suicide by the deceased. Even to invoke the presumption under Section 113(A) of the Evidence Act, it must be shown that she was subjected to harassment or cruelty for or in connection with any dowry or valuable security or property. As discussed supra, the said material fact is not proved in this case. Therefore, no such presumption can be invoked that she committed suicide because of any such harassment said to have been caused to her by the accused. Therefore, the offence under Section 306 is also not proved in this case.

15. Upon considering the evidence on record and on proper appreciation of the same, the trial court arrived at a right conclusion and acquitted the accused.

16. Upon re-appraisal of the said evidence, we are also of the view that no case is made out for any of the said charges against the accused. So the impugned judgment of the trial court cannot be disturbed and it warrants any interference in this appeal. So, the appeal fails and liable to be dismissed.



17. Resultantly, the appeal is dismissed confirming the judgment of the acquittal of the trial court. Bail bond of the accused, if any, shall stand discharged.

18. Record and proceedings be sent back forthwith to the concerned court.

**(CHEEKATI MANAVENDRANATH ROY, J)**

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

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