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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1754 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
KESHUBHAI CHHANABHAI BATHWAR & ORS.

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Appearance:
MS MEGHA CHITALIYA, APP for the Appellant(s) No. 1
MR K S CHANDRANI(6674) for the Opponent(s)/Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 06/02/2026

ORAL JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 01.08.2012, passed by the learned Sessions Judge, Surendranagar, in Sessions Case No.73 of 2011, for the offences punishable under Sections 498(A), 306 and 114 of the Indian Penal Code, the appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, "**the Code**").

2. The prosecution case as unfolded during the trial before the trial Court is that the complaint was filed by the

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complainant – Jagabhai Mangabhai Waghela stating that the deceased - Ranjanben @ Somiben was the daughter of the complainant and marriage of his daughter solemnized with accused No.1 – Keshubhai Chhanabhai Bhathvar, three years prior to the incident; that after the marriage, his daughter was residing in joint family and out of the wedlock, one male child was born; that after that, the accused started taunting the deceased and harassing her mentally and physically; as the harassment was unbearable, the deceased jumped into the well and ended her life on 06.08.2011. Therefore, the complaint was filed against the respondent/s-accused.

3. After investigation, sufficient *prima facie* evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court where it came to be registered as Sessions Case No.11754 of 2012. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to prove the charge, the prosecution has examined 8 witnesses and also produced 6 documentary

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evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which the charge was framed, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that

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the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial Court, the following aspects weighed with the Court :

8.1 The prosecution has examined P.W.1 – Dr. Methlo Yogyo Koniac, vide Exh.14, who has conducted the postmortem and as per his deposition, the death was due to breathlessness and according to his evidence, the death could be accidental death or could be because of suicide.

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8.2 If the evidence of P.W.2 – Kanabhai Jivabhai, who has been examined vide Exh.17, is taken into consideration, he has stated that the construction around the said well was very weak; and that if there was lot of rush near the well, somebody might fall inside the said well.

The prosecution has not carried out the panchnama of the place of offence. Moreover, the prosecution has also not examined any independent witness to prove its case. The case of the prosecution is that the incident has taken place on 06.08.2011 and the complaint has been lodged, which is produced vide Exh.22, by the father of the deceased on the same day. In the said complaint, it has been stated that when they had gone to distribute sweets at the house of the accused, they complained that the deceased does not know the household chores and they do not want to keep the deceased at their house any more and there was scuffle between the them and therefore, at that time, the deceased was brought to the parental home.

8.3 If the evidence of the complainant - Jagabhai Mangabhai Waghela, who has been examined as P.W.3, vide Exh.21, is taken into consideration, he has deposed that after the birth of a child, there is a custom in their family to take sweets after 15 to 20 days of the birth at the matrimonial home of the daughter and it is at that time

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that there was a dispute and accused No.1 had tried to assault the wife of the complainant (mother-in-law) with a stick and the other family members had intervened. In his deposition, it also transpires that he had also told his daughter that they had asked the deceased (daughter) that does she want to get married to someone else, but she has refused; and that the said incident had happened around four months before the date of that incident. He has also deposed that before six months from the date of incident, the deceased has not informed that she was suffering from any mental and physical cruelty. He has also deposed that on the Wednesday, just before the date of incident, he had a talk with his daughter and she has not stated anything of having any mental and physical harassment from the accused.

8.4 The mother of the deceased - Amariben Jagabhai has been examined as P.W.4, vide Exh.23, who has stated that due to dispute of the deceased with the accused, the deceased had come to reside at her parental home four times during the marriage span. In her cross-examination, she has stated that she is illiterate; and that the police has neither recorded her statement nor obtained her signature; and that her son-in-law used to call her daughter and inquire about her well being; and that the accused had murdered her daughter; and that the incident has happened after about

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three months after her daughter was taken back to her matrimonial home. There is lack of consistency between the statements of the complainant and his wife and there are material contradictions between their statements.

8.5 The uncle of the deceased - Arjanbhai Bhikhabhai, who has been examined as P.W.5, vide Exh.24, has not supported the case of the prosecution and has turned hostile.

8.6 The prosecution has also examined Hansaben Dineshbhai as P.W.7, vide Exh.29, who is deceased's brother's wife. She had gone to her field on the date of the dispute between the accused and family of the deceased. It has come on record that the deceased and the accused No.1 were staying separately and were not staying with the other accused.

8.7 If the evidence of the complainant is taken into consideration, the complainant has not proved that what mental and physical harassment was done by the accused to the deceased. The fact also remains that just few days before the incident, the complainant had talked to the deceased and she has not complained of any harassment. If the evidence of the mother of the deceased (P.W.4) is taken into consideration, she has also stated that '*stridhan*' of the deceased has been received back by her. Thereafter, in her

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further evidence, she has stated that only half of the '*stridhan*' has been received from her. There is no complaint with respect to non-receiving the said '*stridhan*'. There are lot of contradictions in the deposition of the said witness i.e. mother of the deceased. The said complainant has not stated that except once, what are the other occasions when the deceased had come to reside at her home and what was the occasion and what was the mental and physical cruelty meted by the accused on the deceased.

8.8 If the entire case of the prosecution is taken into consideration, none of the witnesses of the prosecution have stated that what kind of mental and physical cruelty was meted out by the accused on the deceased and the prosecution is not able to prove that the accused are guilty.

9.1 In the case of **Mahendra K.C. v. State of Karnataka and another**, [**(2022) 2 SCC 129**], it has been held by the Hon'ble Supreme Court that the essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. 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

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certainty to incite the consequence must be capable of being spelt out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

9.2 In the case of **Mahendra Awase v. State of Madhya Pradesh, 2025 (1) Crimes 347 (SC)**, the observations are made with regard to abetment of suicide. It has been held that in order to bring a case within purview of Section 306 IPC, there must be a case of suicide and in commission of said offence, person who is said to have abetted commission of suicide must have played active role by act of instigation or by doing certain act to facilitate commission of suicide. It has been further observed that the act of abetment by person charged with said offence must be proved and established by prosecution before he could be convicted under Section 306 IPC. It is further observed that to satisfy requirement of instigation, accused by his act or omission or by a continued course of conduct should have created such circumstances that deceased was left with no other option, except to commit suicide.

9.3 In the case of **Amalendu Pal alias Jhantu versus State of West Bengal, (2010) 1 SCC 707**, it has been held that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the

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commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable.

9.4 In the case of **Rajesh v. State of Haryana, (2020) 15 SCC 359,** after considering the provisions of Sections 306 and 107 of IPC, the Court held that conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide.

9.5 In the case of **Amudha v. State, 2024 INSC 244**, it was held that there has to be an act of incitement on the part of the accused proximate to the date on which the deceased committed suicide. The act attributed should not only be proximate to the time of suicide but should also be of such a nature that the deceased was left with no alternative but to take the drastic step of committing suicide.

9.6 The prosecution has not been able to prove that the abetment to commit suicide which involves a mental process of instigating a deceased or intentionally aiding a deceased in the doing of a thing without a positive proximate

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act on the part of the accused to instigate or aid in committing suicide. There are merely allegations of harassment without there being any positive action proximate to the time of occurrence on the part of accused which led or compelled the deceased to commit suicide. Moreover, the word uttered in the heat of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. The prosecution has not been able to prove that there was active act or direct act which led the deceased to commit suicide seeing no other option and the prosecution has not been able to prove that the act of the accused was with the intention to push the deceased into such a position that he/she committed suicide.

9.7 The evidence on record and the glaring omission on the prosecution as pointed out above leaves no room of doubt that the order passed by the trial Court is as per law. The trial Court has rightly held that there was no positive evidence on record to prove that the accused by way of the conduct or spoken words, overtly or covertly, actually aided and abetted or instigated the deceased in such a manner that it leaves no other option for the deceased but to commit suicide.

10. Further, learned APP is not in a position to show

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any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, this Court is of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

11. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

12. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in **AIR 1981 SC**

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1417 wherein it is held as under:

> *"... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."*

13. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

14. 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*

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> *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."

15. As observed by the Hon'ble Supreme Court in the case of ***Rajesh Singh & Others vs. State of Uttar Pradesh*** reported in ***(2011) 11 SCC 444*** and in the case of ***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh*** reported in ***(2011) 6 SCC 394***, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset.

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It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the trial 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.

16. In the case of **Chandrappa v. State of Karnataka**, reported in **(2007) 4 SCC 415**, the Hon'ble Apex Court has observed as under:

> *"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*

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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.

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> *(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."*

17. The Hon'ble Apex Court, in a recent decision, in the case of ***Constable 907 Surendra Singh and Another V/s State of Uttarakhand reported in (2025) 5 SCC 433,*** has held in paragraph 24 as under:

> *"24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

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18. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

19. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondent/s - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

20. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is ***dismissed***, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.

(SANJEEV J.THAKER,J)

SRILATHA