IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 506 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	***YES***
2	To be referred to the Reporter or not ?	***YES***
3	Whether their Lordships wish to see the fair copy of the judgment ?	***YES***
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	***YES***

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STATE OF GUJARAT
Versus
KOLI ARJAN SAMAT VADHER & 3 other(s)

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Appearance:
MS.C.M. Shah, APP for the Appellant(s) No. 1
for the Opponent(s)/Respondent(s) No. 1
PINAK RIYANI FOR
MR HRIDAY BUCH(2372) for the Opponent(s)/Respondent(s) No. 1,2,4
RULE SERVED for the Opponent(s)/Respondent(s) No. 2,4
UNSERVED EXPIRED (N) for the Opponent(s)/Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

Date : 06/03/2023

CAV JUDGMENT

1. This appeal is filed by the appellant – State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 31.12.2010, passed

in Sessions Case No. 2 of 2005 by the learned Additional Sessions Judge, Veraval recording the acquittal.

2. Facts in brief are that on 29.10.2004, Anjuben – daughter of complainant – Bhaya Bhagwan Sevra committed suicide by jumping into the well with her minor daughter on account of physical and mental harassment from the respondents – accused, since it is alleged that accused No.1 – husband of deceased Anjuben was having illicit reationship with his sister in law and deceased has tried to stop him. The complainant lodged the FIR in question against the respondents for the offence punishable under Sections 498(A), 306 and 114 of the Indian Penal Code, 1860 (herein after referred to as "the IPC").

2.1 Upon such FIR being filed, investigation started and the Investigating Officer recorded statements of the witnesses and produced certain documentary evidence and after completion of the investigation, Charge-sheet was filed against the accused for the offence in question. The case was committed to the Sessions Court and the learned trial Judge framed the Charge. Since the respondents - accused did not plead guilty, trial was proceeded against the respondents - accused. *Vide* impugned judgment and order dated 31.12.2010, the learned trial Judge acquitted the respondents - accused. Being aggrieved by the

same, the State has preferred the present appeal.

3. Heard, learned Additional Public Prosecutor Ms. C. M. Shah for the appellant – State and learned advocate Mr. Pinank Raiyani for learned advocate Mr. Hriday Buch for the for respondents – accused. Since respondent No.3 expired pending appeal, the appeal stands abated against respondent No.3.

3.1 The learned APP has mainly contended that the learned trial Judge has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. She submitted that the impugned judgment of the trial Court is based on presumptions and inferences and thereby, it is against the facts and the evidence on record. The learned APP further submitted that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby, has erred in recording the acquittal of the respondents – accused.

3.2 The learned APP further contended that the learned trial Judge has erred in holding that the prosecution has failed to prove beyond reasonable doubt that the accused persons have harassed the deceased mentally and physically, which led her to commit suicide.

3.3 The learned APP for the appellant – State submitted that despite sufficient material was there on record in support of the case of the prosecution and though the prosecution successfully proved its case beyond reasonable doubt, the learned trial Judge has committed error in discarding the evidence on record and not believing the same.

3.4 It is submitted that the learned trial Judge has ignored the settled legal position on trial and thereby, has erred in coming to such a conclusion.

3.5 The learned APP, taking this Court through the oral as well as the documentary evidence on record, submitted that though the prosecution has proved the case against the accused beyond reasonable doubt, the learned trial Judge has not properly appreciated the evidence on record and thereby, has committed an error in recording acquittal. It is submitted that though all the ingredients of the offence alleged had been proved beyond reasonable doubt, the learned trial Judge did not believe the same and therefore, the impugned judgment and order suffers from material illegality, perversity and contrary to the facts and evidence on record.

3.6 Thus, the learned APP has submitted that although

cogent and material evidence had been produced by the prosecution and the case was proved beyond reasonable doubt, the trial Court has committed a grave error in acquitting the accused and accordingly, it is urged that present appeal may be allowed by quashing and setting aside the impugned judgment and order of acquittal.

4. *Per contra*, learned advocate Mr. Raiyani for the respondents – accused, while supporting the impugned judgment and order of the trial Court, submitted that the learned trial Judge has, after due and proper appreciation and evaluation of the evidence on record, has come to such conclusion and has acquitted the accused, which is just and proper. He submitted that it is trite law that if two views 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality.

4.1 The learned advocate for the respondents – accused submitted that the ingredients of the offence alleged against the accused are not proved by the prosecution beyond

reasonable doubt and there were several contradictions and omissions in the evidence on record and therefore, the learned trial Judge has rightly acquitted the accused of the charges levelled against him.

4.2 It is submitted that the prosecution has also not been able to establish that the actual incident of cruelty has taken place and the vague and bald allegations as to illicit relationship of the respondent No.1 has also not been substantiated by any evidence whatsoever. Therefore, under such circumstances, when there is no specific allegation of cruelty attributed on any of the respondents, it cannot be said that the prosecution has proved beyound reasonable doubt that the accused persons had committed the said offence and therefore, the trial court has rightly acquitted the respondents – accused.

4.3 It is also submitted that in order to establish that the offence under Section 304 of the IPC is committed, it must be proved that the ingredients of offence under Section 107 of IPC are established so as to cause abetment. However, none of such ingredients are satisfied in the present case.

4.4 It is further submitted that the deceased has not left any suicide note and that in the testimonials of the prosecution

witnesses it can be clearly seen that the married life of the deceased and the respondent No.1 was cordial and happy. Therefore, implication of the present respondents is made without any basis and with ulterior motice.

4.5 It is submitted that for conviction udner Section 306 of IPC, it is requried that the cause of such suicide must be the only reason and in such proximity due to which the deceased committed suicide. However, the prosecution has failed to establisch any such proximity or reason due to which the deceased committed suicide. Therefore, the acquittal awarded by the trial Court is just and proper.

4.6 Thus, making above submissions, it is urged that no interference is required at the hands of this Court and eventually, it is urged that the present appeal may be dismissed.

4.7 In support, the learned advocate for the respondents – accused has relied upon following decisions:

i) *Amlendu Pal @ Jhantu vs. State of West Bengal reported in (2010) 1 SCC 707*
ii) *Gurcharan Singh vs. State of Punjab reported in (2010) 10 SCC 200*
iii) *State of Gujarat vs. Raval Deepakkumar Shankerchand & 2 ors. In Criminal Appeal No.1125*

of 1995

5. Heard the learned advocates for the respective parties and gone through the impugned judgment and order of the trial Court as well as the material on record.

5.1 Before adverting to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

5.2 In ***Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752***, the Apex Court has observed that,

> *"The presumption of innocence which is attached to every accused gets fortified and strengthened when the*

said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court".

5.3 Yet in another decision in ***Chaman Lal v. The State of Himachal Pradesh, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020***, *2020 SCC OnLine SC 988* the Apex Court has observed as under:

"9.1 In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable.

The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v.

State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 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."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) "20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) "(i) The High Court's decision is based on totally

erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

9.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and

considered in paragraph 20 of the aforesaid decision, which reads as under:

> *"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636)." (emphasis supplied)*

9.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

9.4 In the recent decision of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of

decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

> *"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)*
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> *"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."*

31.1. In Sambasivan v. State of Kerala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming

the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.

While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

"8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted

interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and

therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 80910) "5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the

opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

6. In the aforesaid backdrop, if the evidence of PW -1 – Dr. Himatlal Trikambhai Kansagara at Exh.23, who has perfomed post morterm of deceased has described the procedural aspect of post morterm and injuries etc. He has performed post morterm on both deceased and her daughter. However, in his cross – examination, he has stated that it cannot be decided that the cause of death is suicide or an accident.

6.1 If the deposition of PW-2 Bhayabhai Bhagwanbhai,

Exh.36 , who is the Complainant, is referred to, in his cross-examination, he has stated that during 16 years married life of the deceased, she has visited her parental home many times and he and his family have also visited the deceased at her matrimonial house. He has admitted that during these 16 years the deceased has never complained about any ill-treatment or harassment by the respondents. It is also admitted that he has signed the complaint after two days.

6.2 If the deposition of PW-6 Nathabhai Bhayabhai, Exh. 42 is referred to, who is the son of the complainant and brother of the deceased. He has stated in his deposition that married life of his sister was very well but from last one and half year of incident, whenever the deceased has visited his house, she was complaining about character of her husband and that whenever she asks her husband about the same, he harass her mentally and physically. However, in his cross examination he has stated that, he has only heard that accused no.1 – husband of the deceased has illicit relationship with his sister in law. Therefore, it can be said that it is only heresay allegation by this witness that accused no.1 has illicit relations with his sister in law.

6.3 In the deposition of PW – 7 at Exh. 43 – Aajayben Nathabhai, who is wife of PW – 6, brother of the deceased.

She has also stated in her cross examination that deceased has told her that accused No.1 has illicit relations with his sister in law and becuase of that accused No.1 was harassing her mentally and phycially.

6.4 PW-9 – Hajabhai Hamirbhai Mori, PSI has in his deposition stted the procedural part of registering complaint etc. He has stated in his cross examination that till 09.11.0224 it was a case of an accident and there was no crime registered against the accused persons and that he has not recorded the statements of the relatives of the deceased till then.

6.5 The PW – 3 – Gangaben Bhayabhai, who is wife of the complainant and mother of the deceased is examined at Exh.38, she has reiterated the same facts as per the complainant.

6.6 Thus, considering the above, it appears that there are contradictions in the depositions of the complainant himself, whereas, some of the witnesses have not supported the case of the prosecution. Further, there is nothing on record, except bare words that the respondent – accused had illciit relationship with his sister in law and therefore he was harassing the decease menally and phycially. Moreover, it is only heresay because each of the witnesses including

complainant has admitted in cross examination that they have only heard about accused no.1 having illicit relations with his sister in law. Moreover, deceased and accused No.1 were living seperately from faterh in law and brother in law of the deceased since long and therefore, there is no possibility of harassment of other family members on any ground. Therefore, it cannot be said that accused – respondents have instigated the deceased to take such extreme step. At this juncture, if the decision of the Apex Court in ***M. Arjunan v. State, AIRONLINE 2018 SC 846*** is referred to, the Court has held as under:

> *"8. The essential ingredients of the offence under Section 306 IPC are (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide.* ***There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC."***

6.7. The Hon'ble Supreme Court in the case of **Gurucharan Singh Versus State of Punjab**, reported in **(2020) 10 SCC 200**, has observed in para 16 and 17 as under :-

> "16. The necessary ingredients for the offerce under Sectiva 306 IPC were considered in **S.S. Chheena v.**

Vijay Kumar Muhajun, reported in **(2010) 12 SCC 190**, where explaining the concept of abetment. Dalveer Bhandari, J. wrote as under:

> **"25.** Abetment involves a mental process of instigating a persoa ofr intentionally aiding a person in doing of a tung. Without a pusitive act on the part of the accused to instigate or and in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

17. While dealing with a case of abciment of suicide in **Amulendu Pal v. State of W.B.**, reported in **(2010) 1 SCC 707**, Dr. M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

> **"12.** Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the coun must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be

proof of direct or indirect acts of incitement to the 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 person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore. the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC"

14. The expression "abetment has been defined under section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses. Secondly or Thirdly of section 107 IPC. Section provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted.

> According to him, in a case of abetment of suicide is made out as provided for under section 107 IPC.”

6.8. It is beneficial to refer to the judgment of Hon’ble Supreme Court of India in the case of **Arnab Manoranjan Goswami versus State of Mahrashtra and others,** reported in **(2021) 2 SCC 427**, where the Hon’ble Apex Court has observed in Paras : 49, 50, 51, 55, 57 and 58 as under :

> “49. Before we evaluate the contents of the FIR, a reference to Section 306 of the IPC is necessary. Section 306 stipulates that if a person commits suicide - whoever abets the commission of such suicide shall be punished with imprisonment extending up to 10 years17. Section 107 is comprised within Chapter V of the IPC, which is titled -Of Abetment. Section 107 provides:
>
> > “107. Abetment of a thing.—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
> >
> > Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.
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> > Explanation 1.—A person who, by willful

misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to 17 306. 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. PART I 35 cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

50. The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in State of West Bengal vs Orilal Jaiswal, Randhir Singh vs State of Punjab, Kishori Lal vs State of MP (—Kishori Lal) and Kishangiri Mangalgiri Goswami vs State of Gujarat. In Amalendu Pal vs State of

West Bengal, Justice Mukundakam Sharma, speaking for a two judge Bench of this Court and having adverted to the earlier decisions, observed :

> "12...It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the 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 person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

51. The Court noted that before a person may be said to have abetted the commission of suicide, they —must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Instigation, as this Court held in Kishori Lal (supra), —literally means to provoke, incite, urge on or bring about by persuasion to do anything. In S S Chheena vs Vijay Kumar Mahajan, a two judge Bench of this Court, speaking through Justice Dalveer Bhandari, observed:

> "25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person

> under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

52. Madan Mohan Singh vs State of Gujarat[24] was specifically a case which arose in the context of a petition under Section 482 of the CrPC where the High Court had dismissed the petition for quashing an FIR registered for offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with [24] the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of which indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had other complaints including the deduction of 15 days' wages from his salary. The suicide note named the accused–appellant. In the decision of a two judge Bench of this Court, delivered by Justice V S Sirpurkar, the test laid down in Bhajan Lal (supra) was applied and the Court held:

> "10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the socalled suicide note which could be suggested as abetment to commit suicide. In such

matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.**"**

53. Dealing with the provisions of Section **306** of the IPC and the meaning of abetment within the meaning of Section **107**, the Court observed: PART I **38.**

"12. In order to bring out an offence under Section **306** IPC specific abetment as contemplated by Section **107** IPC on

the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note." The Court noted that the suicide note expressed a state of anguish of the deceased and "cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide." Reversing the judgment of the High Court, the petition under Section 482 was allowed and the FIR was quashed." 55. More recently in M Arjunan vs State (represented by its Inspector of Police)25 , a two judge Bench of this Court, speaking through Justice R. 25 (2019) 3 SCC 315 PART I 39 Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations: "7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the

> accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

57. Similarly, in Rajesh vs State of Haryana, a two judge Bench of this Court, speaking through Justice L. Nageswara Rao, held as follows:

> "9. 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must Criminal Appeal No. 93 of 2019 decided on 18 January 2019 be proved and established by the prosecution before he could be convicted under Section 306 IPC."

58. In a recent decision of this Court in Gurcharan Singh vs State of Punjab, a three judge Bench of

this Court, speaking through Justice Hrishikesh Roy, held thus:

> "15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased."

6.9 In the case on hand also, as discussed herein above, there is nothing on record to show or suggest that the accused had instigated the deceased to commit suicide. Further, as said earlier, there were contradictions in the deposition of the complainant himself. Further, some of the witnesses have not supported the case of the prosecution. Moreover, there is nothing on record capable of suggesting that the accused intended by such an act to instigate / abet to commit suicide.

6.10. Thus, on re-appreciation and reevaluation of the oral and the documentary evidence on record, as well as considering the settled legal position, it transpires that the prosecution has failed to prove the case against the accused beyond reasonable doubt inasmuch as the ingredients of the offence alleged are not fulfilled. The Court has gone through in detail the impugned judgment and order and found that the learned trial

Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

6.11 It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of ***State of Rajasthan versus Ram Niwas*** *reported in* ***(2010) 15 SCC 463*** be made in this regard. In the said case, it has been observed as under:-

> *"6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :*
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> *"8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and*

conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice Such a risk can be minimised but

not ruled out altogether It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:

"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

"9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."

> *8. In Arulvelu and another versus State reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:*
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> *"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

6.12 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 learned trial 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 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.

7. In view of the aforesaid discussion and observations, in the considered opinion of this Court, the prosecution has failed to bring home the charge against accused for want of sufficient material. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, the appeal stands dismissed. Impugned judgment and order dated 31.12.2010, passed in Sessions Case No. 2 of 2005 by the learned Additional Sessions Judge, Veraval, recording the acquittal is confirmed. Bail bond, if any, shall stand cancelled. R&P, if received, be transmitted back forthwith.

Sd/-

(RAJENDRA M. SAREEN,J)

R.H. PARMAR