IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 696 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
NAGABHAI DHANABHAI PATEL

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Appearance:
MR LB DABHI APP for the Appellant
MR KAIVAN K PATEL(6338) for the Respondent

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

Date : 13/10/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State under Section 378 of the Cr.P.C. against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Palanpur, passed in Sessions Case No. 102 of 2001 dated 24.05.2002, acquitting the sole accused Naga Dhana Patel from the offences punishable under Sections 498A, 302, 304B of the IPC and Section 135 of the Bombay Police Act.

3. We have heard Mr. L.B. Dabhi, learned advocate for the appellant and Mr. Kaival K. Patel, learned advocate for the respective parties.

4. Brief facts giving rise to file the present Appeal are that, on 26.04.2001, in the morning hours the respondent accused had killed his wife, by inflicting an axe blows. According to case of the prosecution, on 26.04.2001, the deceased wife and respondent husband residence of village: Satsan, Dantivada, Banaskantha being a farm labourer had gone to their farm and stayed there for a day one. The deceased wife expressed her desire to visit her parental home at village : Sodal. The accused husband refused to let her go. She insisted to visit Sodal. The husband lost his temper and in a fit of rage, inflicted blows on the neck of the deceased wife with a weapon axe, which resulted into severing veins. The brother of the accused Dungarbhai PW-1, who was present at the scene, intervened and saved her from further blows. She was taken to Dhanera Government Hospital for further treatment and then admitted in private hospital. PW-1, on the same day at about 12-00 night lodged an FIR against his brother accused with the Pathvada Police Station for the alleged offence. The condition of the deceased was very serious. She could not speak, however, she was conscious about the situation. She was further taken to Civil Hospital, Ahmedabad. The police tried to record her dying declaration but due to her condition the Executive Magistrate could not record the dying declaration. She died on 20.05.2001. The cause of death was cardio respiratory failure due to complication and throat injury. The offence of murder was being added with the permission of the Court. The IO of the

case recorded the statement of witnesses, arrested the accused, recovered the weapon in terms of Section 27 of the Evidence Act, sent the seized articles to the FSL and at the end, he filed the chargesheet against the accused for the offence of murder, cruelty and dowry death. The case was committed to the Court of Sessions at Palanpur.

5. The learned Sessions Judge framed charges to which the accused pleaded not guilty and claimed trial.

6. In order to prove the charge, the prosecution has examined as many as 14 witnesses and produced and proved 26 documentary evidence.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, he claimed his innocence and stated that he has been falsely implicated in the offence.

8. The learned Sessions Judge, after appreciating and examining the oral as well as documentary evidence, acquitted the accused herein for the offences with which he was charged, on the following grounds:

    (i) That, the complainant eye-witness PW-1 being a brother of the accused has not supported the case of the prosecution and in the cross-examination, after declaring him as hostile witness, did not support to the case of the prosecution.

(ii) That the prosecution failed to prove that, on the day of incident, the wife and husband were alone in the house and the house, wherein, the incident had occurred, is belonged to accused herein.

(iii) That the oral dying declaration before the brother of the deceased PW-6, is not reliable because the factum of dying declaration given by the witnesses in the court, has not been disclosed by the witness by the police, when his police statement under Section 161 came to be recorded.

(iv) That the blood stained found on the weapon axe which is matched with the blood group of the deceased would alone is not sufficient to infer that the accused was responsible for the murder of his wife.

9. In such circumstances, the Trial Court while acquitting the accused, held and observed that the prosecution has miserably failed to prove the charge against the accused by leading cogent and convincing evidence.

10. Mr. L.B. Dabhi, learned APP appearing for and on behalf of the State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material; that the Trial Court failed to appreciate that at the time of incident the deceased and accused husband were alone at the farm and in what manner and in what circumstances

deceased had sustained injury that is required to be explained by the accused. He failed to explained the circumstances of death and therefore, the burden of proving a fact within the special knowledge of the accused than reasonable inference is that he did the act with particular intention. That, another piece of evidence is the recovery of the axe at the instance of the accused, consequently, the forensic evidence with respect to the blood group matched with the blood group of the deceased has been discarded and ignored by the trial Court. Thus, the trial Court ought to have considered the prosecution case on circumstantial evidence as in the facts of the present case, the incriminating circumstances as referred above having been proved independently and cumulatively it forms the chain of circumstances pointing towards the guilt of the accused and none else.

11. In such circumstances, the view taken by the trial Court is unreasonable and findings are perverse, which has resulted into miscarriage of justice and therefore, it has been submitted that this is a fit case to admit the appeal.

12. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

13. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court.

14. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the

acquittal and when the same is justified. 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 judgment of acquittal. The Appellate Court should bear in mind the presence 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 of possible should be avoided, unless there are reasons for interference.

15. In the facts of the present case, it is not in dispute that the death of the deceased is homicidal in nature. The only issue falls for our consideration, as to whether the prosecution proves that on 26.04.2001, in the morning, the accused killed his wife by using weapon axe, whereby, he committed the offence of murder as provided under Section 302 of the IPC?

16. In the case on hand, the material witnesses namely complainant - Dungarbhai – PW-1, PW-4 Devabhai Hansabhai and PW-5 Kanabhai Kasnabhai have been declared hostile by the prosecution, as they have not supported to the case of the prosecution and in their cross-examination, they do not have supported so far incident and on the other aspect involving the accused is concerned. Thus, it is not proved and established that, the dead body of the deceased found from the house of the accused respondent. On the contrary, it is come on record that the house belonged to PW-1. Therefore, it is difficult for us to raise adverse inference against the accused by invoking Section 106 of the Evidence Act. So far as family members

of the deceased is concerned, they have no personal knowledge about the incident. Admittedly, deceased due to throat injury, could not speak and unable to explain the factum of alleged incident. The witness PW-6 Nanjibhai Jodhabhai being a brother of the deceased, stated in his deposition that, he interacted with the deceased and by her gesture and sign, he could understand and grasp that, it was the accused who committed a murder of her sister by weapon axe. The trial Court has disbelieved the evidence of PW-6 mainly on the ground of contradiction, omission and exaggeration made by the witness on the aspect of oral dying declaration. Upon careful examination of evidence of PW-6, we found that the witness did not have disclose the factum of oral declaration in his police station recorded under Section 161, 162 of the Cr.P.C. In our opinion, this discrepancy in the deposition and the police statement cannot be said to be a minor discrepancy and therefore, the evidence of PW-6 become suspicious and cannot be relied upon. So far as recovery of axe is concerned, the panchas of recovery panchnama turned hostile. The police failed to deposed the contention of the panchnama and voluntariness of the accused. Therefore, the disclosure statement and recovery of the weapon cannot be read in evidence. So far as forensic evidence is concerned, this evidence alone cannot basis to convict the accused as the forensic evidence is corroborative evidence and same cannot be accepted as substantial evidence.

17. Thus, after reanalysis of the evidence, we are of the considered opinion that the prosecution miserably failed to prove the charge against the accused, either by direct evidence or by circumstantial

evidence beyond reasonable doubt.

18. In the result, we do not find any perversity in the impugned judgment and in absence of substantial and compelling reason, no ground exists to interfere with the findings of acquittal recorded by the Trial Court and therefore, in our view, the Trial Court was justified in acquitting the accused.

19. Accordingly the appeal stands dismissed. R&P, if any, be sent back to the concerned court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 13/10/2026 16:22:06