IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 1947 of 2004
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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THE STATE OF GUJARAT
Versus
JAMNASHANKAR J. GAUR & ORS.

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Appearance:
MR ROHAN H RAVAL, APP for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 1,5
MR RK MISHRA(482) for the Opponent(s)/Respondent(s) No. 2,3,4

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI
Date : 09/10/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Being aggrieved and dissatisfied with the judgment and order of acquittal dated 15.11.2003 passed by the learned Additional Sessions Judge, Sabarkantha, at Himmatnagar (Camp: Modasa), in Sessions Case No.54 of 1992, whereby the respondents-accused, came to be acquitted, by extending the benefit of doubt under Section 235(1) of the Code of Criminal Procedure, 1973 ("the Code" for short), of the offences punishable under Sections 302, 498(A) and 120-B of the Indian Penal Code, the appellant-State has preferred the present Criminal Appeal under Section 378 of the Code.

2. The brief facts leading to the filing of the present appeal are as under:

2.1. The deceased, Falguniben, was married to respondents-accused No.3, and resided with respondents-accused Nos.1, 2, 4 and 5, her in-laws, at village Vadagam. The complainant, her father, alleged persistent dowry demands and physical and mental cruelty meted out to the deceased by the respondents-accused on that count, and that the deceased was found dead by hanging at her matrimonial home in circumstances, and with injuries, suggesting a homicidal rather than a suicidal death.

2.2. A complaint came to be lodged at Dhansura Police Station for the offences punishable under Sections 302, 498(A) and 120-B of the Indian Penal Code. Upon completion of investigation, a charge-sheet was filed before the learned Judicial Magistrate, First Class, Modasa, and the case, being exclusively triable by the Court of Session, came to be committed to the learned Sessions Court, Sabarkantha, where it was registered as Sessions Case No.54 of 1992. Charge was framed against the respondents-accused, who pleaded not guilty and claimed to be tried.

2.3. Upon appreciation of the evidence on record, the learned Sessions Court, by the impugned judgment and order dated 15.11.2003, acquitted all the respondents-accused of the said offences by extending to them the benefit of doubt under Section 235(1) of the Code.

2.4. During the pendency of the present appeal, respondent no.1 and respondent no.5 had passed away and accordingly, by oral order dated 05.02.2026, this Court recorded the said fact and abated the present appeal, qua the respondent no.1 and respondent no.5.

3. Submissions on behalf of the Learned APP for the State:

3.1. Learned APP for that State while assailing the impugned judgment

of acquittal by the learned Sessions Judge has submitted that deceased, passed away within five years of marriage. The prosecution case is that she was subjected to cruelty under Section 498A IPC. Once such cruelty is established, the Court may presume abetment of suicide under Section 113A of the Evidence Act. The Sessions Court erred in refusing to draw this presumption and in treating the unnatural death as inconsequential.

3.2. It is submitted that the Sessions Court erred while discarding the evidence of Bhavnaben (Exh. 20), Poornimaben (Exh. 25), Nikitaben (Exh. 26) and Bipinchandra (Exh. 27), who despite specifically deposed of deceased was subjected to physical and mental torture, on the ground that there was no eyewitness. Such cruelty occurs within the matrimonial home, and the relatives to whom the deceased complained, and who saw its effects, are the natural witnesses. Their evidence cannot be rejected because they did not witness the final act.

3.3. It is submitted that the Sessions Court overemphasised minor contradictions in cross-examination. These do not affect the core of the case: unnatural death within five years of marriage, together with evidence of torture. Though the witnesses are relatives, on these facts they are the only real witnesses of cruelty. The Court also failed to consider that they had directly or indirectly advised the deceased to return to her matrimonial home in the hope that her husband and in-laws would reform.

3.4. It is further submitted that the Medical Officer, Dr. Z. A. Yadav (Exh. 28), who conducted the post-mortem, supported the prosecution. He stated that the cause of death was strangulation, that the death was unnatural (which could be termed suicide), and that there were injuries on the body. The Sessions Court concluded it was suicide without giving due

weight to the strangulation and injuries.

3.5. It is lastly submitted that the panch witness, Amin Bhaskarbhai Kansara, deposed that the complainant produced the diary and letter in his presence. The letter's last line reads "I will not die", showing the deceased was a strong-willed woman unlikely to end her life. Read with the ante-mortem injuries in the post-mortem report, it supports the inference that she was beaten and strangulated, and that there is evidence against the accused.

3.6. Hence, it is prayed that the present appeal may be allowed and the impugned judgment passed by Learned Sessions Court, being contrary to law and evidence, may be quashed and set aside.

4. Submissions on behalf of the Advocate for the respondents-accused:

4.1. Per contra, learned Advocate for the respondents-accused has submitted that the judgment of acquittal recorded by the learned Sessions Court is a well-reasoned and possible view of the evidence, warranting no interference in appeal.

4.2. It is submitted that Section 113A of the Evidence Act does not enact a compulsion of conclusiveness. The Court may presume abetment, and only after having regard to all the other circumstances, and only where suicide within seven years and cruelty of the kind in section 498A are both shown and established. The medical evidence itself, through Mr. Z. A. Yadav at Exh. 28, is that the death was unnatural and may be termed a suicide. The learned Sessions Court was therefore has not erred in holding that this was a case of suicide. Strangulation as a cause, and

the presence of some injuries, do not by themselves convert that opinion into a case of homicide, nor do they fix the act upon the accused.

4.3. It is submitted that there is no eyewitness to the incident. Bhavnaben at Exh. 20, Poornimaben at Exh. 25, Nikitaben at Exh. 26, and Bipinchandra at Exh. 27 are relatives. Their evidence of physical and mental torture was tested in cross-examination, and the learned Sessions Court found major contradictions. Those contradictions were not required to be brushed aside as minor. Interested testimony, uncorroborated by an eyewitness to the occurrence, could properly be held not to inspire confidence. The fact that relatives may sometimes be the only persons spoken to about matrimonial cruelty does not compel the Court to accept their version when it does not stand scrutiny.

4.4. It is further submitted that the diary and the letter, said to have been produced by the complainant in the presence of the panch Amin Bhaskarbhai Kansara, do not carry the prosecution further. A line reading “I will not die” is not proof that the deceased was beaten or strangulated by the accused, nor does it exclude suicide. The document is one produced by the complainant. It does not name an author of any assault, and it does not establish abetment. The learned Sessions Court was right in not treating it as leading evidence of guilt.

4.5. Hence, it is submitted that the prosecution case, whether rested on cruelty, on the legal presumption, or on an inference of beating and strangulation, was not proved beyond reasonable doubt. The acquittal is neither perverse nor contrary to the evidence. The appeal deserves to be dismissed.

4.6. Learned Advocate for the respondents-accused has placed reliance

on the decision of this Court in the case of ***State of Gujarat v. Vakhatsinh Mansinh Parmar, 2020 (0) AIJEL-HC 242141*** and the decision of Hon'ble Supreme Court in the case of ***Jose @ Pappachan v. Sub-inspector of Police, 2016 (0) AIJEL-SC 59219***.]

5. We have heard the learned advocates for the respective parties and carefully examined the oral and documentary evidence adduced before the learned Sessions Court.

6. The deposition of Nikitaben Hiteshkumar Thakar (Exh.-26) shows that she is the younger sister of the deceased Falguni, who had been married to accused No. 3 about five years prior to the incident and was residing at Vadagam. She deposed that, being younger, she did not converse much with her sister about her married life, but stated that on one occasion, when the witness herself was expecting a child and Falguni had come to visit, Falguni had fractures on her hand and leg for which treatment was taken at Ahmedabad, and that on being questioned, Falguni told her that her mother-in-law and Ragu had beaten her with a broom, causing her to fall and sustain the fractures. She further introduced, for the first time in her deposition, an incident of a subsequent visit to Vadagam where Falguni's plate of food was thrown away while she was serving accused Shaileshbhai, and where the mother-in-law had allegedly taunted her about her father living off dowry.

7. In cross-examination, however, the witness admitted that her police statement recorded only that whenever Falguni visited her parental home from Vadagam she used to stay there and that the witness, being young, never spoke to her about anything. The learned Sessions Court held that the incident of beating with a broom does not appear in the complaint at all, that it is not explained how a person who fractured her hand and leg at

Vadagam could have travelled to Ahmedabad in that condition, and that once the witness herself admits she never spoke to Falguni, it is not understandable how she came to know of any harassment or demand for dowry. We find no reason to disturb this appreciation.

8. A witness who concedes, in her own cross-examination, that no conversation ever took place between her and the deceased cannot simultaneously depose to specific, detailed conversations regarding beating and dowry harassment, particularly where such account surfaces for the first time at trial and is physically improbable on its own showing. The improvement is plainly an embellishment, and the learned Sessions Court was right in holding that Exh.-26 does not connect the accused with any act of cruelty or dowry demand.

9. The deposition of complainant Bipinchandra Natwarlal (Exh.-7), nephew of Babubhai and a relative of the deceased's family, shows that on 05.08.1991, while at his shop, he received a telephone call from accused Shaileshbhai from Vadagam asking him to come urgently, and that when he reached Vadagam the next day, the last rites of Falguni had already been performed, his uncle told him that Falguni was not the sort of person to commit suicide and that she had been strangled. He further deposed that Falguni used to meet him whenever she visited Ahmedabad but did not talk to him, and that during a ten to twelve day stay at his house in April, she had told his wife that her parents-in-law harassed her over dowry demanded by her younger brother-in-law and that her husband beat her, this information having reached the witness only through his wife.

10. The learned Sessions Court held that such evidence is hearsay, that the witness speaks to nothing within his own knowledge, and that he does

not even depose to any specific amount or article demanded as dowry. Evidence of what a witness's spouse was told by the deceased, and thereafter passed on to the witness, is at best hearsay, and cannot be treated as proof of harassment or of any dowry demand by the present accused, the complete absence of particulars as to what was demanded further deprives the allegation of any evidentiary value. The learned Sessions Court was right in holding that Exh.-7 does not connect the accused with the offence.

MEDICAL EVIDENCE:

11. The Medical Officer, Dr. Z.A. Yadav (Exh.-28), who conducted the post-mortem, deposed that he found two ante-mortem injuries on the body a blue-reddish ligature mark around the neck, and a bluish abrasion on the right forearm together with a reddish abrasion on the back of the left elbow and opined that these were simple injuries consistent with striking against a wall or similar object, that death was caused by hanging, and that, on the material before him, the death was suicidal. In cross-examination, he admitted that the elbow injury could have been caused by a blunt object and the abrasion by a fingernail, and it was brought out that the rough jottings made during the post-mortem (Exh.-31) recorded only the ligature mark and not the other two injuries later described in the post-mortem note (Exh.-29), the doctor's explanation, that the omission from the jottings may have been an inadvertent lapse, remained unsupported by production of any other contemporaneous paper. A further discrepancy was noted in that the post-mortem note (Exh.-29) and death certificate (Exh.-30) bear an endorsement of receipt by the investigating officer dated 06.08.1991, although both the post-mortem note and the rough jottings bear the doctor's own signature dated 07.08.1991 leaving unexplained how the report reached the police a day before it was purportedly signed.

12. Notwithstanding these infirmities in the paperwork, the doctor maintained, even in cross-examination, that had the deceased been strangled by the accused the injuries would have been of a different character, and had she been assaulted and thereafter hanged to simulate suicide, the body would have shown considerably more injuries than were actually found, on this basis, he affirmed his opinion that the deceased had taken her own life.

13. The learned Sessions Court accepted this opinion and held that the medical evidence, taken as a whole, pointed to suicide.

14. We find that the irregularities in the post-mortem paperwork are, at the highest, lapses in record-keeping and do not, by themselves, establish that the deceased was assaulted and then hanged, what carries weight is the doctor's own considered opinion, given even under cross-examination, that the nature and paucity of the injuries are inconsistent with homicidal strangulation or with an assault followed by hanging. When this medical opinion is read together with the failure of both witnesses examined on the question of dowry harassment to furnish any reliable, direct, or particularised evidence against the accused, the conclusion of the learned Sessions Court that the prosecution has not proved its case beyond reasonable doubt calls for no interference.

15. The deposition of Amit Bhaskarbhai Kansara (PW-32, panch witness to Exh.-33 and Exh.-34) shows that in his presence the complainant produced a postcard, said to have been written by the deceased Falguni to her father in 1990, and a diary in which the complainant had noted certain facts pertaining to the postcard. Neither the postcard nor the diary was, however, produced or proved before the

Court, the witness himself deposed that the diary was seized as muddamal and that the postcard could not be read as it was moth-eaten, its contents being placed on record only through a photocopy at Mark-A. Since the full text of the postcard is recorded in the panchnama Exh.-33, the accused ought to be held responsible on the strength of that recorded text.

16. The person to whom the postcard was addressed, namely the father, was not examined, and no other witness speaks to the writing or receipt of this postcard, the original complaint (Exh.-35) itself contains no reference whatsoever to any such postcard or diary. Even assuming the contents recorded in the panchnama to be accurate, they do not establish that the postcard was written by the deceased Falguni, nor do they disclose any reference, direct or indirect, to any of the present accused.

17. On the contrary, examining the purport and contents of the postcard a message to the family expressing that she had not been able to visit for some time, asking that her parents not worry on her account or that of her sisters, and stating that none of them was the sort to end her life without cause the natural reading of these words is that they were written in ordinary language only to reassure her parents, and not as an expression of any grievance against her husband's family. If anything, the postcard tends to show that the deceased did not take her life on account of any harassment, for a person capable of writing such a letter to her father would equally have been capable of setting down, before her death, some complaint against the accused, which she did not do. The learned Sessions Court was, therefore, right in holding that Exh.-33 and Exh.-34 do not connect the present accused with the offence.

18. This witness further deposed, in cross-examination, that the diary

panchnama was drawn up first and the postcard panchnama shortly thereafter, within about ten minutes of each other, however, the panchnamas themselves record the postcard panchnama as having been conducted between 17:00 and 17:30 hours and the diary panchnama between 18:00 and 18:15 hours, contradicting the witness's own account of the sequence and interval. The diary panchnama (Exh.-34) discloses no fact capable of connecting the accused with the offence, recording only a bare reference to something having been "thrown out," without specifying what. The witness also admitted that the statements of Bhavnaben and Nikita, recorded during investigation, make no mention of either the diary or the postcard, and that he has cited no independent witnesses to these facts apart from the deceased's own family members and the Medical Officer.

19. Of particular significance, after his cross-examination had concluded, the witness volunteered and the Court specifically recorded that the Superintendent of Police (D.S.P.) was not present when certain family witnesses' statements were recorded on 10.08.1991, that there was an overnight halt at Ahmedabad, and that it was only on 11.08.1991 that the D.S.P. came and verified those statements, this stood in direct contradiction to his earlier suggestion that the investigation had proceeded under the D.S.P.'s presence.

20. The learned Sessions Court held that these inconsistencies gave rise to a reasonable inference that something had been withheld or embellished on the part of the prosecution, and that neither through this witness, nor through the testimony of the prosecution witnesses taken as a whole, nor through the surrounding circumstances, could the accused be connected with a criminal conspiracy, with cruelty to the deceased during her married life, or with her intentional killing.

21. We find no reason to take a different view. A panch witness whose account of timing is falsified by the very documents he proves, and whose voluntary disclosure reveals a discrepancy as to the supervising officer's presence during recording of crucial statements, cannot be treated as inspiring confidence, taken together with the infirmities already noted in the postcard and diary evidence, the learned Sessions Court was correct in declining to connect the present accused with the offence on this material.

22. We have scrutinised the evidence and examined the reasoning of the learned Sessions Court with due care and caution. It is undoubtedly a matter of grave concern that a young woman lost her life, and no Court can be unmindful of the seriousness of such a loss. However, the seriousness of the occurrence and the sympathy that it naturally invites cannot, by themselves, take the place of legal proof. Even where certain facts on record may give rise to an element of suspicion, suspicion, howsoever strong, cannot be equated with proof beyond reasonable doubt, and a conviction cannot rest upon a possibility or surmise where the evidence itself falls short of establishing the charge.

23. On a cumulative appreciation of the evidence already discussed the unreliable and improved testimony of Nikitaben Hiteshkumar Thakar (Exh.-26), the hearsay account of Bipinchandra Natwarlal (Exh.-7), the medical opinion of Dr. Z.A. Yadav (Exh.-28) indicating suicide, and the unproved and self-contradicted postcard and diary evidence spoken to by Amit Bhaskarbhai Kansara (Exh.-32, Exh.-33, Exh.-34) we find that the learned Sessions Court's conclusion, that the prosecution has failed to connect the present accused with any act of cruelty, criminal conspiracy, or intentional killing of the deceased, is a plausible and reasonable view

taken on a fair and careful reading of the record. An appellate court can not substitute its own view for that of the Court below merely because another view may conceivably be taken on the same material, interference is called for only where the view taken below is unreasonable or perverse, which is not the case here. We find no such infirmity in the appreciation made by the learned Sessions Court.

24. Thus, the whole case of the prosecution rests on the circumstantial evidence; however the prosecution has failed to place on record any such circumstances to link the chain so as to surface the implication of the accused in commission of the crime in question. It is pertinent to note that even as per the case of the prosecution, in absence of any motive, that itself is sufficient to dislodge the case of prosecution if other proven circumstances could form a chain so complete as to indicate that in all human probability it is accused and no one else who committed crime yet, in a case based on circumstantial evidence, motive plays an important part.

25. Now, reverting back to the facts of the present case, nothing sort of any such material seems to be placed on record to indicate as to motive behind the commission of the offence in question and therefore, admittedly the whole case rests on the circumstantial evidence and considering the way in which the entire incident have been described, followed by the investigation carried out by the IO and to convict the accused in absence of any direct evidence though dealing with the case based on circumstantial evidence, the important aspect which requires to be considered are such as (i) whether circumstances relied by prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards guilt of accused; (iii) whether those circumstances taken cumulatively form a

chain so far complete that there is no escape from conclusion that within all human probability crime was committed by accused; (iv) whether they are consistent only with hypothesis of accused being guilty; and lastly (v) whether they exclude every possible hypothesis except one to be proved.

26. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of ***Laxman Prasad Alias Laxman (supra)*** where the Hon'ble Apex Court after referring to ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** and ***Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]*** has quashed the conviction by making observations in paragraph 2 to 4 as under:

> *"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.*
>
> *3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:*

(i) Sharad Birdhichand Sarda v. State of Maharashtra,
(ii) Shailendra Rajdev Pasvan v. State of Gujarat.

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."

27. 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 consider 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, as the same has been laid down by the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***.

28. For the forgoing reasons, the present appeal is dismissed. Record and proceedings, if any, be remitted to the concerned Court.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 09/10/2026 17:20:10