

Reserved On : 18/03/2026
Pronounced On : 08/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2661 of 2008

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STATE OF GUJARAT

Versus

BHARVAD CHEHARABHAI RAJABHAI & ORS.

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Appearance:

MR YUVRAJ BRAHMBHATT, APP for the Appellant(s) No. 1

ABATED for the Opponent(s)/Respondent(s) No. 3

RULE SERVED for the Opponent(s)/Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER

CAV JUDGMENT

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 07.08.2008, passed by the learned Additional Sessions Judge, Fast Track Court No.3, Patan, in Sessions Case No.81 of 2007, for the offences under Sections 306, 201 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**”). The present appeal is abated qua respondent no.3 and it is heard qua respondent nos.1 and 2.

2. The prosecution case as unfolded during the trial before the trial Court is that the complainant, Amaratbhai Shankarbhai Thakor, had gone to Radhanpur for labour work on 29.12.2006 and stayed there overnight. The next morning,

upon being informed to return home urgently, he found his brother Merambhai dead. On inquiry, he learned that the accused had allegedly murdered his brother and staged it as a hanging. It was further revealed that the deceased's wife was having an illicit relationship with the main accused. Based on this, an offence was registered on 30.12.2006 at Varahi Police Station under Sections 302 and 34 of the Indian Penal Code.

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.81 of 2007. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined 6 witnesses and also produced 22 documentary evidence before the Trial Court, which are described in the impugned judgment as under:

Details	Exhibit
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Deposition of Prosecution Witness No. 1 – Amaratbhai Shankarbhai Thakor (Complainant).	15
Original Complaint.	16
Panchnama of the place of occurrence	16
Inquest Panchnama of the dead body	17
Panchnama of the scene of offence	18
Panchnama of seizure of clothes from the dead body	19
Panchnama regarding the physical condition of the accused	20 to 22
Deposition of Prosecution Witness No. 2 – Thakor Jemalbhai Shankarbhai (Witness)	24
Deposition of Prosecution Witness No.3 – Sagarbhai Merambhai (Witness)	26
Deposition of Prosecution Witness No. 4 – Dr. Paresh Kanaiyalal Kadiya	27
Yadi (requisition) made to the Medical Officer	28
Post-mortem note of the dead body	29
Certificate showing cause of death	30
Deposition of Prosecution Witness No. 5 – Manish Bhagwanji Nakum (Investigating Officer)	31

Report for registration of offence	32
Deputy order	33
Yadi addressed to the Executive Magistrate	34
Yadi for conducting inquest	35
Post-mortem form	36
Receipt of handing over the dead body	37
Receipt regarding articles (muddamal) received	38
Preliminary report of the Forensic Science Laboratory (FSL)	39
Report for addition of sections	40
Yadi made to the Medical Officer	41
Dispatch entry of FSL	42
Forwarding letter for sending muddamal to FSL	43
FSL Report	44
Deposition of Prosecution Witness No. 6 – Raghuvarsinh Mahavirsinh Bhadoriya (Investigating Officer).	45

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 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. The appeal is abated qua respondent no.3. Though served, none appears on behalf of the respondent nos.1 and 2.

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 complainant, PW 1, Amrutbhai Shankarbhai, was examined on oath vide exhibit 15. In his deposition, he stated that he came to know about the incident from his brother, Jemalbhai, after he returned home. When he reached home, the dead body of Merambhai was lying there, and upon asking Jemalbhai, he was told that Merambhai had been strangled to death. Thereafter, when the police arrived, he lodged the complaint, in which it was stated that his brother had been killed by strangulation. On perusal of the deposition of this witness, it appears that he is not an eyewitness, but only a hearsay witness. Furthermore, even in the complaint lodged by him, he has committed an error, as he has stated in Paragraph 3 of his examination-in- chief. Due to misunderstanding, although his brother had in fact committed suicide, he mentioned in the complaint that the accused had killed him. In fact, the reason alleged for his

brother's suicide was that accused Nos. 1 and 2 were having an illicit relationship, on account of which his brother committed suicide.

8.2. In the cross-examination of this witness, he admitted that he did not have any speaking terms with the deceased, Mehrambhai, and that they did not visit each other even for social dealings. He has further stated in cross-examination that he had not spoken either with the deceased's son, Prahladbhai, or with accused No. 2, Bhuriben. Thus, upon considering his testimony, it appears that even his brother, Jemalbhai, is a hearsay witness, and the complaint has been lodged based on what he was told by Jemalbhai. Moreover, although the complaint was initially filed alleging the offence of murder, subsequently in his testimony before the court he revealed that the death of the deceased was not homicidal but suicidal. Therefore, from the testimony of this witness, it is established only that the deceased committed suicide; however, the reason for such suicide is not proved.

8.3. The evidence of PW-2, Thakor Jemalbhai Shankarbhai, is available at Exhibit 24. He is the brother of the deceased, Mehrambhai. This witness has also deposed that the cause of death of the deceased was the illicit

relationship between accused Nos. 1 and 2, on account of which his brother died.

8.4. Among the witnesses examined by the prosecution, one of the material witnesses is Sagarbhai Mehrambhai, who has been examined as PW-3 at Exhibit 26. According to the prosecution, this witness is an eyewitness. In his examination, Sagarbhai stated that the complainant is his uncle; the deceased was his father, accused No. 2 is his mother, and accused No. 3 is his maternal uncle. He has further stated that accused No. 1 belongs to the Bharwad community and that he has no relation with him.

8.5. He further states that on the day of the incident, his mother Bhuriben, his brother Bharat, and all of them were present at home. In the afternoon, his maternal uncle Jodhabhai came, and in the evening, his uncle also came, who stays at Sangli. In the evening, all of them were sitting down to have dinner, Cheharabhai came to their house. Later, when beds were arranged for sleeping, they were all sitting on the cots and talking, at that time, his father told his mother to tell Cheharabhai not to come to their house. Thereafter, his father also directly told Cheharabhai not to visit their house. At that point, Cheharabhai (accused no. 1) replied that he would continue

to come, as he had an illicit relationship with Bhuri. Upon this, his father told Bhuriben to ask Cheharabhai (accused no. 1) not to come, otherwise he would end his life. However, Bhuriben (accused no. 2) responded that even if he died, it did not matter, and that Cheharabhai (accused no. 1) would continue to come. Thereafter, they went to sleep, and around midnight they heard some commotion from the cattle-shed, where a lamp was on. He, along with his brother Bharat, went to the shed and saw that all three accused were standing there, and his father was hanging with a ligature around his neck. Thereafter, his maternal uncle cut the rope by which his father was hanging, and all three of them laid his father on a cot. Accused Cheharabhai (accused no. 1) then left for his house. After some time, his maternal uncle and others also went to their respective houses, and thereafter his mother started crying listening to which his uncle and some other people came. Another uncle Amratbhai i.e. complainant, came at noon on next day. This witness stated that his father committed suicide due to shock as his mother has an affair with the accused.

8.6. In cross-examination, the witness admits that he does not know what time it was at night when he woke up. His mother started crying at around 4–5 a.m. If this

witness had actually seen his father's dead body in the morning, he would have raised an alarm or at least informed the neighbors or relatives immediately. However, this witness did not do anything of that sort. Therefore, his testimony appears to be doubtful.

8.7. The testimony of PW-4, the doctor, is also important. In his deposition, Dr. Paresh Kanaiyalal Gadiya states that he conducted the post-mortem of the deceased's body and that the cause of death was asphyxia due to hanging. According to him, if a person hangs himself by tying a noose around the neck, the injuries noted in the post-mortem report are possible. In the general external injuries on the body, ligature marks of a brownish color were present on the neck, and at the place of the knot, there were no ligature marks on the right side at the back of the neck. Thus, looking upon testimony of the doctor it can be said that deceased has committed suicide.

8.8. On considering the testimony of witness Sagarbhai, it appears that in the evening the deceased served food to Cheharabhai and also made him sleep there. The deceased told Cheharabhai not to come to their house, but Cheharabhai replied that he would still come since

he had an illicit relationship with his wife. In these circumstances, even if such an illicit relationship existed, no person would openly make such a statement to the husband. Therefore, the claim regarding the existence of such an illicit relationship does not appear to be believable in reality.

8.9. The deceased told his wife that if accused no. 1 came, he would kill himself, to which his wife replied that even if he died, it would not matter, but accused no. 1 would still come. Merely on the basis of such statements, it cannot be accepted that any person would commit suicide. Moreover, the witness did not see his father at the time when he went to commit suicide. The witness also did not state anything about what his father did before committing suicide, how the rope was tied, or how exactly he hanged himself.

8.10. When Cheharabhai (accused no.1) came, he was served food and allowed to sleep in the house, which indicates that there was no bitterness in the relationship between them.

8.11. Furthermore, the accused are charged under Section 201 of the IPC for destruction of evidence.

However, accused No. 3 merely cut the rope by which the deceased was hanging and brought the body down, placing it on a cot, and did nothing else. Therefore, it cannot be said that there was any destruction of evidence. Destruction of evidence can be said to have occurred only when the evidence is concealed or tampered with in such a manner that no evidence remains against the accused. In the present case, the accused did not commit any act to dispose of or conceal the dead body. The body was left in the same place, and this fact has also been witnessed by Sagar. It is also possible that the accused acted in such a manner in an attempt to save the deceased, so that if he were still alive, he could be taken to the hospital and possibly be saved by bringing him down. If the deceased was already dead while hanging, then it makes no difference whether the body remained hanging or was brought down and placed on a cot, as the person had already died.

9.1 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. In the present case, the prosecution has also not been able to prove the clear motive of the accused to commit offence of abatement. There is also no close connection between the accused's action and the deceased's choice to commit suicide. In view of the said fact, the prosecution has not been able to prove that the accused have stimulated the deceased to commit suicide.

9.2 The prosecution has not proved that there was a clear motive to commit the offence of abatement. The prosecution has also not proved that the accused proceeded to encourage and/or irritate the deceased through words or insults and that the accused intended to urge the deceased to end it all by committing suicide. The prosecution has also not been able to prove the direct connection between the incitement and committal of suicide. The prosecution has also not been able to prove direct or indirect act of incitement to the commitment of suicide. The prosecution has also not been able to prove by accusation of harassment without any positive action on the part of the accused close to the time of occurrence that led and forced the deceased to commit suicide.

9.3 The present matter turns on whether the conduct attributed to the accused satisfies the legal threshold of abetment of suicide. Therefore, read as a whole, it can be said that mere occurrence of a suicide does not automatically trigger rigours of the Section. The penal consequences under Section 306 of the Indian Penal Code arise when the prosecution is able to establish that the accused abetted and had a role in provoking or facilitating that suicide. Therefore, this twin test distinction is required to be borne in mind.

9.4 Abetment, as understood in criminal jurisprudence, is not a broad moral expression but a term of precise statutory meaning. Section 107 IPC delineates its contours: instigation, conspiracy, or intentional aiding. Each of these modes presupposes active involvement. The law does not punish omission except in some cases, it punishes intentional encouragement or positive facilitation of a prohibited act.

9.5 It is therefore not sufficient to show that the deceased was unhappy, distressed, or subjected to unpleasant treatment. The jurisprudence developed by the Hon'ble Supreme Court has consistently underscored that routine domestic disagreements, suspicion between spouses, or episodes of harassment do not ipso facto amount to

instigation. Rigours of this Section intervene only where there is clear evidence of mens rea and a direct causal link between the accused's conduct and the decision of the deceased to commit suicide.

9.6 The concept of instigation demands something more than mere reproach or accusation. It connotes an active suggestion, an incitement, or conduct of such intensity that it operates upon the mind of the victim and pushes him or her toward this drastic and unfortunate step. The prosecution therefore, must demonstrate either a deliberate intention to drive the deceased to suicide or knowledge that the conduct in question was likely to produce that consequence. Equally indispensable is the requirement of proximity. The law insists on a live and immediate nexus between the acts complained of and the suicide. A remote or generalized allegation is insufficient. There must be evidence showing that the accused engaged in conduct so closely connected in time and effect with the suicide that it can reasonably be said to have triggered the fatal act.

9.7 No material has been brought on record demonstrating any proximate act immediately preceding the suicide which could be construed as instigation. Nor is there evidence of a positive act amounting to intentional aid. The

essential ingredients of abetment -namely, culpable mental state coupled with active or proximate conduct-are not established.

9.8 On an overall assessment of the evidence, the prosecution has failed to demonstrate the existence of the foundational elements necessary to sustain a conviction under Section 306 IPC.

10. 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 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.

10.1 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.

10.2 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 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.

10.3 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.

10.4 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.

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

12. 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.

13. 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 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.”

14. 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.

15. 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 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."

16. 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. It is further observed that High Court's interference in such appeal is 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.

17. 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 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.”

18. 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.”

19. 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.

20. 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.

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

URIL RANA

Sd/-
(SANJEEV J.THAKER,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RANA URIL K(HC01406), PRIVATE SECRETARY, at High Court of Gujarat on 08/04/2026 14:37:31