IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1140 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE S.V. PINTO Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
VIJAYKUMAR BHANUBHAI BARAIYA

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Appearance:
MR KRUTIK A PARIKH, APP for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1
MRS REKHA H KAPADIA(2246) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 05/11/2026

ORAL JUDGMENT

1. The appeal is filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 against the judgement and order of acquittal passed by the learned 2nd Additional Sessions Judge, Kheda at Nadiad (hereinafter referred to as "the learned Trial Court") in Sessions Case No.121 of 2014 on 06.06.2016, whereby, the learned Trial Court has acquitted the respondent for the offence punishable

under Sections 498(A), 306 and 504 of Indian Penal Code, 1860.

1.1 The respondent is hereinafter referred to as “the accused” as he stood in the original case for the sake of convenience, clarity and brevity.

2. The brief facts that emerge from the record of the case are as under:

2.1 Alkaben, the daughter of the complainant Ambaben Bhagwanbhai Pagi, was married to the accused about four years before the incident, and they had no children. About six months before the incident, the accused used to talk to some girl on the phone. Alkaben did not like it and scolded the accused. The accused then abused her and subjected her to mental and physical harassment. Fed up with the harassment, she jumped into a canal on 26.08.2013 and committed suicide. The complainant, the mother of the deceased, filed a complaint at Virpur Police Station, District Kheda, for the offences under Sections 498(A), 504 and 306 of the IPC. It was registered as I-C.R. No.31 of 2013.

2.2 The Investigating Officer recorded the statements

of the connected witnesses and seized the necessary documents and after completion of investigation, a charge-sheet came to be filed before the Court of the Judicial Magistrate First Class, Balasinor and as the said offences against the accused was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Kheda at Nadiad as per the Section 209 of the Code of Criminal Procedure and the case was registered as Sessions Case No.121 of 2014.

2.3 The accused was duly served with the summons and the accused appeared before the learned Trial Court and it was verified whether the copies of all the police papers were provided to the accused as per the provisions of Section 207 of the Code. A charge at Exh.5 was framed against the accused and the statement of the accused was recorded at Exh.6 wherein, the accused denied the contents of the charge and the entire evidence of the prosecution was taken on record.

2.4 The prosecution examined 11 witnesses and produced 11 documentary evidences on record and after the learned Additional Public Prosecutor filed the closing pursis,

the further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. After the arguments of the learned Additional Public Prosecutor and the learned advocate for the accused were heard, the learned Trial Court by the impugned judgement and order was pleased to acquit the accused from the charges levelled against him.

3. Being aggrieved and dissatisfied with the said judgment and order of acquittal, the appellant - State has filed the present appeal mainly stating that the impugned judgment and order of acquittal passed by the learned Trial Court is contrary to law and evidence on record and the learned Trial Court has not appreciated the fact that all the witnesses have supported the case of the prosecution and during the cross-examination, nothing adverse has been elicited in favor of the respondent. The case has been proved beyond reasonable doubt and the prosecution has successfully established the case against the respondent and the judgment and order of acquittal is unwarranted, illegal, and without any basis in the eyes of the law and the reasons stated while acquitting the respondent are improper, perverse and bad in law. Hence the

impugned judgment and order passed by the learned Trial Court deserves to be quashed and set aside.

4. Heard learned APP Mr. Krutik A. Parikh for the appellant State and learned advocate Ms. Rekha H. Kapadia for the respondent No.1. Perused the impugned judgement and order of acquittal and have reappreciated the entire evidence of the prosecution on record of the case.

5. Learned APP Mr. Krutik A. Parikh has taken this Court through the entire evidence of the prosecution on record of the case and submitted that the complainant has fully supported the facts of his complaint. The impugned judgement and order is perverse and learned APP has urged this Court to quash and set aside the same and find the respondent guilty for the offences.

6. Learned advocate Ms. Rekha H. Kapadia for the respondent No.1 has submitted that the learned Trial Court has appreciated all the evidence in true perspective and has not committed any error in acquitting the accused. Therefore, no interference of this Court is required in the impugned judgement and the order of acquittal passed by the learned Trial Court and has urged this Court to reject the appeal.

7. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and it has finally culminated when a case ends in an acquittal. The learned Trial Court has appreciated all the evidence and when the learned Trial Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the accused gets strengthened. There is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.

8. At the outset, it would be appropriate to refer to the observations of the Apex Court regarding the applicability of Section 306 in the case of ***Amalendu Pal alias Jhantu v. State of West Bengal***, reported in **(2010) 1 SCC 707,** wherein, the Apex Court has observed as under:

> ***9.*** *At the outset, we intend to address the issue regarding the applicability of Section 306 IPC in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as*

follows:

> "*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.*"
>
> "*107. Abetment of a thing. A person abets the doing of a thing,*
>
> *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.*
>
> *Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*
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> *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.*"

10. *The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in Randhir Singh v. State of Punjab as follows in paras 12 and 13: (SCC p. 134)*

> *"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.*
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> *13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience*

of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

11. *Further, in Kishori Lal v. State of M.P. this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6: (SCC p. 799)*

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word 'instigate literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a

person is charged with the abetment is normally linked with the proved offence."

(See also Kishangiri Mangalgiri Goswami v. State of Gujarat, SCC p. 55, para 13.)

12. *Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 1PC, the court 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.*

9. To prove the offence against the accused, the prosecution has in all examined eleven witnesses.

9.1 PW1 – Ambaben Bhagwanbhai Pagi examined at Exh.9 is the complainant and the mother of the deceased. She has narrated the facts stated in the complaint, which is produced at Exh.26. She has stated that the accused used to consume liquor and physically assault her daughter. When she got the information that her daughter had fallen into the canal, she went there and saw that the dead body was lying away from the canal. The clothes on the body were not wet and there were injury marks on the body and the nose and ears were bleeding.

In her cross-examination by the learned advocate for the accused, the witness has stated that she has not named the girl with whom the accused was talking in the complaint. No police complaint or private complaint had been filed against the accused before the incident. Her daughter had never taken any treatment for physical assault by the accused. On the day of the incident, at around 2 p.m., the accused had come to her house to give fertilizers, and as it was the festival of Janamashtami, he had taken her son Sanjay

with him to celebrate the festival. She went to file the complaint with her husband, other relatives and persons from the village. As she is not literate, the complaint was written by the others who were with her, and she only affixed her thumb impression on the complaint and she has not stated in the complaint that the accused consumed liquor. The witness has admitted that she has no personal knowledge of any illicit relationship of the accused with any person.

9.2 PW2 – Bhalabhai Punjabhai Pagi examined at Exh.11 and PW4, Prabhatbhai Ramabhai Pagi examined at Exh.14 are the panch witnesses to the panchnama of the place of offence, produced at Exh.12. Both witnesses have not supported the case of the prosecution.

9.3 PW3 – Bhagwanbhai Punjabhai Pagi examined at Exh.13 is the father of the deceased and has mainly supported the case of the prosecution. In his cross-examination, he has stated that the accused has a shop for recharging mobile phones and many persons call him on the phone throughout the day. After marriage, the deceased never filed any complaint against the accused and never took any treatment for physical abuse by him. He does not know

the name of the girl with whom the accused is alleged to have an illicit relationship, he has not inquired into the allegation, and he has no personal knowledge about it. His wife filed the complaint only because they had a doubt that the accused had an illicit relationship with someone. On the day before the incident, the accused had come to his house to give fertilizers, and the next day was the festival of Janmashtami, so his son Sanjay went with the accused to Bharodi village. His daughter had no child during her married life, and she was a very sensitive person. The family members and relatives discussed the incident and decided to file the complaint.

9.4 PW5 – Babubhai Ramabhai Pagi examined at Exh.16 is the uncle of the deceased. He has supported the case of the prosecution. In his cross-examination, he has admitted that the accused had a mobile shop and received phone calls from many persons. His niece had a doubt that the accused was talking to some girl, but he did not discuss this with her and he has no personal knowledge of the incident.

9.5 PW6 – Sanjaykumar Bhagwanbhai Pagi examined at Exh.17 is the brother of the deceased. He has supported the

case of the prosecution. In his cross-examination, he has stated that his brother-in-law had a mobile shop and received a very large number of phone calls during the day. He had gone with his brother-in-law to his sister's house, where his sister and brother-in-law quarrelled about a shirt alleged to have been given by some girl. He then went out, and when he returned, he found that his sister had fallen into the canal.

9.6 PW7 – Prabhatbhai Masurbhai Baraiya examined at Exh.18 is a relative of the deceased. He has not supported the case of the prosecution.

9.7 PW8 – Dr. Babubhai Jaisingbhai Maliwad examined at Exh.20 is the Medical Officer who was on duty at the Community Health Centre, Virpur. Along with Dr. I.S. Pandya, he conducted the postmortem on the dead body of the deceased on 27.08.2013, between 12.15 a.m. and 1.55 a.m. He has stated that there were no injury marks or fractures on the body. The cause of death was kept pending until the final FSL report from Ahmedabad was received. After the FSL report was received, the final cause of death was given as drowning. He has produced the postmortem note at Exh.21 and the cause of death certificate at Exh.22.

9.8 PW9 – Sureshbhai Parvatbhai Pagi examined at Exh.23 and PW10 - Babubhai Bhurabhai Pateliya examined at Exh.24 are the panch witnesses to the inquest panchnama, produced at Exh.10. Both witnesses have not supported the case of the prosecution.

9.9 PW11 – P.S.I. Amratlal Lakshmiram Acharya examined at Exh.25 is the Investigating Officer. He has narrated the procedure followed by him during the investigation. In his cross-examination by the learned advocate for the accused, he has stated that he did not record the statement of any independent neighbours of the accused. There was an allegation that the accused had an illicit relationship with a girl, but no name of any girl emerged during investigation. During the lifetime of the deceased, no complaint of physical or mental harassment by the accused was found, and nothing was found to show that any dowry was demanded. No injury marks were found on the dead body in the inquest panchnama.

10. On minute appreciation of the entire evidence of the prosecution, it appears that, as per the prosecution’s case, the deceased committed suicide because she suspected

that the accused had an illicit relationship with some girl and was constantly talking to her on the phone, and because of this he mentally and physically harassed her. However, there is not an iota of evidence in the entire evidence of the prosecution to show that the accused had an affair with any girl. In fact, the evidence shows that the accused had a mobile shop and received phone calls from many persons, and the deceased only had a doubt that he was having an affair with someone. There is also no evidence that the deceased was subjected to any mental or physical harassment during her lifetime. The complainant and the other relatives have all stated that they have not named any girl with whom the accused is alleged to have had an affair. The evidence of PW3 – Bhagwanbhai Punjabhai Pagi also shows that the deceased had no child and was a very sensitive person.

11. In view of the settled position of law, the learned Trial Court has appreciated the entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The learned Trial Court has appreciated all the evidence and this Court is of the considered opinion that the learned Trial

Court was completely justified in acquitting the accused of the charges leveled against him. The findings recorded by the learned Trial Court are absolutely just and proper and no illegality or infirmity has been committed by the learned Trial Court and this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the learned Trial Court. This Court finds no reason to interfere with the impugned judgment and order and the present appeal is devoid of merits and resultantly, the same is dismissed.

12. The impugned judgement and order of acquittal passed by the learned 2nd Additional Sessions Judge, Kheda at Nadiad in Sessions Case No.121 of 2014 on 06.06.2016, is hereby confirmed.

13. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

Sd/-

(S. V. PINTO,J)

ROHAN SONI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ROHAN SONI(HC02356), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 05/11/2026 15:28:41