

(2020) 06 GUJ CK 0123
In the Gujarat High Court
Case No : R/Criminal Appeal No. 971 Of 2004

Kiranbhai Amaratlal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 313, 374(2)
Indian Penal Code, 1860 — Section 114, 304B, 306, 498A
Dowry Prohibition Act, 1961 — Section 2, 4, 5
Evidence Act, 1872 — Section 113

Citation : (2020) 06 GUJ CK 0123

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : J M Panchal, K J Panchal, Jirga Jhaveri

Final Decision : Allowed

Judgement

P.W.1,Amrutbhai Madhavlal Patel,Exh.10

P.W.2,Paliben Amrutbhai,Exh.13

P.W.3,Vithalbhai Pitambardas Patel,Exh.14

P.W.4,Nimeshkumar Purusottamdas Patel,Exh.15

P.W.5,Dr.Jayantibhai V. Satapara,Exh.23

P.W.6,Rameshbhai Ranchhodbhai Patel,Exh.25

P.W.7,Babubhai Mohanlal Jasani,Exh.26

P.W.8,Second PI Talaji Pratapji Vaghela,Exh.27

P.W.9,Rafikuddin Amiruddin Kadari,Exh.28

1.,Complaint,11

2.,Inquest Panchnama,16

3.,Panchnama of recovery of clothes of the deceased,17

4.,Forwarding Note of FSL,18

5.,Covering letter of FSL,19

6.,Receipt regarding receiving muddamal by the FSL,20

7.,Serological report of FSL,21

8.,Opinion of mudamal of FSL,22

9.,P.M. Note,24

10.,Report of Charge Executive,29

According to him, all the witnesses are near relatives of the deceased and are interested witnesses and they are contradictory to each other. He has",,

submitted that the tendency of the witnesses is simply to rope the accused in the alleged offence. According to him, when the evidence on record is",,

not reliable and trustworthy as to the ingredient of cruelty, no conviction can be sustained in the eyes of law. He has submitted that the Trial Court has",,

not properly appreciated the evidence in its proper perspective and the same warrants interference and the same may be quashed and set aside and",,

the present appellant may be acquitted from the charges leveled against him.,,

12.5 Mr.Panchal, learned senior counsel has relied upon the following decisions.",,

1. Rameshchandra C. Soni and others Vs. State of Gujarat, 2002 (3) G.L.H. 182; ",,

2. Gurcharan Singh Vs. State of Punjab, (2017) 1 SCC 433; ",,

13. Ms.Jirga Jhaveri, learned Additional Public Prosecutor for the respondent â?" State has submitted that the evidence on record clearly indicates",,

that the deceased was subjected to cruelty and harassment by the present appellant and she was driven to commit the suicide by the action of the",,

present appellant. While referring to the evidence of the father of the deceased and other relatives, Ms.Jhaveri, learned Additional Public Prosecutor",,

has submitted that there is specific narration of the factum of demand of amount from the complainant and there is also narration regarding the",,

physical cruelty to the deceased. She has submitted that it is not required that everything should be narrated in the FIR. She has submitted that the FIR",,

was immediately filed. She has submitted that the marriage was solemnized in the year 1996 and the present incident has taken place in the year 2001.,,

Thus, the marriage life of the deceased is just four years. She has submitted that there was settlement between the parties and, therefore, it could be",,, presumed that the present appellant â?" accused has subjected the deceased to cruelty and harassment. She has submitted that considering the facts,, on record, the presumption under Section 113A of the Indian Evidence Act is applicable. She has submitted that hardly any persons would know as to",,, what has happened in the four corner of the house where the husband and wife are residing. She has submitted that the accused side has not,, examined any defence witness. She has submitted that the father and mother of the deceased have already deposed regarding physical cruelty to the,, deceased and information was given to the parents and relatives. She has submitted that soon before the death of the deceased, there was cruelty",,, meted out to the deceased.,,,

13.1 Ms.Jhaveri, learned Additional Public Prosecutor has submitted that non-examination of the independent witness is not fatal to the case of the",,, prosecution and if there are minor contradiction in the evidence of the witnesses, then, such contradiction may be ignored. According to her version, as",,, the evidence are recorded after passage of long time, it may be possible that there may be some discrepancy between the evidence of the witnesses",,, inter se. But, that fact may be ignored and the only fact as to the cruelty is required to be decided on the evidence made available on record. She has",,, submitted that the Trial Court has not committed any error of facts and law in convicting the present appellant â?" accused and imposing sentence,, upon him. She has, on instruction, conceded that no acquittal appeal has been filed against accused No.2 and 3 by the State.",,,

13.2 Ms.Jhaveri, learned Additional Public Prosecutor has submitted that the decisions cited by the learned advocate for the appellant are not",,, applicable to the facts of the present case. On relying upon the following decision, Ms.Jhaveri, learned Additional Public Prosecutor has submitted that",,, the appeal may be dismissed and the impugned judgment and order of the Trial Court may be confirmed, so far as the present accused is concerned.",,, Jatinder Kumar Vs. State of Haryana, 2019 SCC Online SC 1628.",,,

14. In rejoinder, Mr.Panchal, learned senior counsel has submitted that the evidence on record is not reliable and trustworthy and there is no evidence",,, to connect the present accused with the crime. He has submitted that the

reliance placed upon the above decision by the learned Additional Public,,
Prosecutor is not applicable to the facts of the present case.,,

15. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which",,

the order of acquittal is founded. However, Appellate Court 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.",,

16. Further, 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. 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 and the conclusion arrived",,

at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse.",,

17. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court",,

below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is",,

perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court",,

in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the",,

accused is connected with the commission of the crime with which he is charged.,,

18. In the case of Rameshchandra C. Soni(supra), this Court has held and observed in para-15 as under:-",,

15. Mr.Panchal, learned Counsel for the appellants has submitted that considering the fact that all these witnesses are closely connected with the",,

deceased, they would be anxious to see that the accused are punished any how

and for that reason their evidence should not be accepted at its face",,,
value and great care and caution should be exercised before accepting it. I am inclined to accept the contention of Mr. Panchal since the witnesses,,
examined by the prosecution to prove the aspect of cruelty and harassment to Premila by the accused are parents, brother and the close friend of the",,,
deceased. It is but natural that since their dear one has met with an unnatural death, they would hold the accused responsible for the death and a",,,
feeling of revenge would prompt them to give exaggerated version and to make even false allegations against the accused to see that they are,,
penalised by the Court. As has been observed by different Courts in the decisions that the natural tendency on the part of close relatives of the victim,,
to make efforts to secure conviction of the accused any how and for that they may go totally out of the way to help the prosecution. In support of his,,
aforesaid contention Mr.Panchal has cited decision of the Hon'ble Apex Court rendered in the case of Sharad v. State of Maharashtra reported in,,
AIR 1984 SC 1622. He has drawn my attention to the relevant portion, which is reproduced hereinabove:",,,

44. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements,,
are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close",,,
relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a,,
tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love,,
and affection for the deceased would create a psychological hatred against the murderer and, therefore, the Court has to examine such evidence",,,
with very great care and caution. Even if the witnesses are speaking a part of the truth or perhaps the whole of it, they would be guided the accused",,,
person and in this process certain facts which may not or could not have been stated unconsciously by the witnesses in order to see that the offender,,
is punished. This is human psychology and no one can help it.â??,,
Considering the evidence in light of the aforesaid observations. I find that the evidence of prosecution witnesses and in particular the evidence of,,
Ramesh and Bhavnaben, shows a feeling of revenge and hence it cannot be

accepted.",,

19. In the case of Gurcharan Singh (supra), the Apex Court has held and observed in paras-26 to 31 as under:-",,,

â??26. Though for the purposes of the case in hand, the first limb of the explanation is otherwise germane, proof of the willful conduct actuating the",,,

woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, is the sine qua non for entering a finding",,,

of cruelty against the person charged.,,,

27. The pith and purport of Section 306 IPC has since been enunciated by this Court in R andhir Singh v. State of Punjab, (2004)13 SCC 129, and the",,,

relevant excerpts therefrom are set out hereunder.,,,

â??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 ,,,

13. In State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73, 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.â?? (emphasis supplied),,,

28. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal, (1994) 1 SCC 73 that courts have to be extremely",,,

careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same,,

had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to",,,

ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not",,,

expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above",,,

view was reiterated in *Amalendu Pal v. State of W.B.* (2010) 1 SCC 707.,,,

29. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an",,,

offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by",,,

this Court in *S. S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190.",,,

30. In *Pinakin Mahipatray Rawal v. State of Gujarat* (2013) 10 SCC 48 ,this Court, with reference to Section 113A of the Indian Evidence Act, 1872",,,

while observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married,,,

woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the burden of",,,

proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well",,,

has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC",,,

was emphasised.,,,

31 The assessment of the evidence on record as above, in our considered opinion, does not demonstrate with unqualified clarity and conviction, any",,,

role of the appellant or the other implicated in-laws of the deceased Surjit Kaur, as contemplated by the above provisions so as to return an",,,

unassailable finding of their culpability under Section 306 IPC. The materials on record, to reiterate, do not suggest even remotely any act of cruelty",,,

oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-extinction being left with no other",,,

alternative. No such continuous and proximate conduct of the appellant or his family members with the required provocative culpability or lethal,,,

instigative content is discernible to even infer that the deceased Surjit Kaur and her daughters had been pushed to such a distressed state, physical or",,,

mental that they elected to liquidate themselves as if to seek a practical alleviation from their unbearable earthly miseries.,,,

20. In the case of Jatinder Kumar (supra), the Apex Court has held and observed in paras-7 and 8 as under:-",,,

7. But the view of the Court reflected in that judgment that seeking financial assistance would not per se constitute demand for dowry has been,,

rejected by a later judgment of a three Judge Bench of this Court in the case of Rajinder Singh v. State of Punjab (2015) 6 SCC 477. Upon,,

considering the case of Appasaheb (supra) and certain other authorities, it was held in the case of Rajinder Singh (supra):-",,,

20. Given that the statute with which we are dealing must be given a fair, pragmatic, and commonsense interpretation so as to fulfill the object",,,

sought to be achieved by Parliament, we feel that the judgment in Appasaheb case followed by the judgment of Vipin Jaiswal do not state the law",,,

correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the",,,

Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would",,,

necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.â??",,,

8. It was also held in the Rajinder Singh (supra) that the expression "soon" is not to be construed as synonymous with "immediate". The,,

observation of the three-Judge Bench on this point is :-,,

23. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the,,

word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the,,

enactment of section 304B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is,,

necessary is that the demand for dowry should not be state but should be the continuing cause for the death of the married woman under section,,

304B.â??,,

21. On perusal of the evidence of Amrutbhai Madhavlal Patel, P.W.1 at Exhibit 10, it appears that he has deposed in his deposition that Binaben was",,,

his daughter and her marriage was solemnized with the present accused in the year 1998. According to him, her daughter studied upto M.A.",,,

Regarding the incident, he has stated that on 15.01.2001, when he was in his

house at about 8.30 pm to 9.00 pm, one boy namely Jintedra came and",,,
told him that the meeting of the community was held and, therefore, at that
time, a jeep was ready and he traveled in the jeep and during the course of",,,
journey, he received message from the Ahmedabad that his daughter Binaben
has committed suicide by hanging herself. According to his version, he",,,
went to the resident of her daughter and reached in the night and father-in-law,
brother-in-law of the deceased and many persons were gathered there",,,
and father-in-law of the deceased told him that deceased Binaben has committed
suicide by hanging herself and it had happened before 6.00 pm.,,,
According to him, he was in trauma and he could not see the dead body of the
deceased as it was sent to the Civil Hospital for postmortem. He has",,,
stated that he has instructed his relative to inform Bharatbhai and Satishbhai,
who were residing in Rabari Colony, Ahmedabad and, thereafter, he",,,
again went to the Civil Hospital and get the possession of the dead body of the
deceased and they went to the house of in-laws of the deceased and",,,
thereafter, he filed the complaint against the accused.",,,

21.1 He has stated that the marriage was performed two and half years before
the incident and she was residing in Ahmedabad along with her,,
husband and in-laws. He has deposed that the deceased was used to come to
her parental home and her husband was doing the business of tuition,,
classes and he was in need of money and, therefore, the accused was asking her
to bring money from her parents. He has stated that due to non-",,,
payment of such amount, they were not treating her properly. He has stated that
thereafter, Binaben came to her parental home and they persuaded",,,
her to go back to her matrimonial home and again she went to her matrimonial
home and, thereafter, after one month, the accused have started",,,
demanding money from the deceased and not behaving properly with her and,
therefore, she came back again to the parental home and resided in",,,
parental home for sometime. According to him, thereafter, they have tried to
settle the dispute between the parties and they have gathered at Unjha",,,
and the present accused and his family members have agreed that they would
not harass the deceased and bring the deceased to her matrimonial,,
home. That, thereafter, after 15 days or one month, the demand of money was
made by the accused and on refusal of the same, the accused was",,,
used to harass mentally and physically and was insisted her to bring amount

from her parents at any cost. He has stated that the present appellant -,,
accused was not behaving as husband with the deceased and used to beat her.
He has stated that this fact was narrated to him by his wife. He has,,
stated that due to the cruelty meted out by the accused, Binaben has committed
suicide.",,

21.2 It is stated by the complainant that the accused were not permitting the
deceased to go to her elder sister's house or matrimonial uncle's house.,,,

According to him, six months prior to the incident, the accused has filled up the
form for the post of PSI and at that time, he has demanded the money",,,

and has also physically harassed the deceased and due to that, she has
committed suicide.",,

21.3 During his cross-examination, it reveals that the factum of not permitting
the deceased to visit her elder sister's house and her matrimonial house",,,

was not stated by him earlier and it is improvement in his deposition. Not only
that but insisting upon her by the accused to bring the amount at any,,

cost has also not been narrated earlier. It also appears from the cross-
examination of this witness that the betrothal of the deceased was solemnized,,

before the marriage of two years and the marriage was solemnized as per their
customs and rituals of the community dowry was exchanged between,,

the parties. It also reveals from his cross-examination that after the marriage,
the deceased has stayed only eight days in her matrimonial home and,",,

thereafter, she remained at her parental home for a period of six months at
Unava and at that time, her husband was used to visit her. He has stated",,,

that he has also met the accused and he studied upto B.A., whereas, his
daughter has completed degree of M.A. after marriage. He has stated that",,,

deceased was frequently coming to the parental house and he cannot say as to
how much time deceased has resided with the accused in the,,

matrimonial home. At first moment, he has shown ignorance as to the fact that
as to whether there is tuition class of the present accused or not.",,

However, at the next moment, he has stated that the tuition class was conducted
by accused. He has stated that both the parties met at Unjha prior to",,,

one and half years of the present incident. He has stated that when the
community meeting was held at Unjha, the deceased has not told regarding",,,

cruelty and at that time, the settlement came to be arrived at between the
parties and no any written settlement agreement was carried out between",,,

the parties. He has stated that whenever he used to come at Ahmedabad, he used to visit the house of the deceased. He has stated that after the,, marriage, the son-in-law has visited his home for 2 to 3 times. He has stated that whenever the son-in-law visited his house, the deceased was always,, their in his house and son-in-law was used to come at his house. He has stated that he has not raised any grievance at anywhere regarding the,, demand of money by son-in-law for his tuition class. He has shown ignorance as to whether his son-in-law has filled up the form for the post of PSI or,, not.,,

21.4 On perusal of entire evidence of this witness, it appears that whatever he has narrated in his deposition is hearsay in nature and he has made,, improvement regarding substantial facts of demand of amount as well as incident of not permitting the deceased to visit her elder sister's house and,, her matrimonial uncle's house.,,

22. On perusal of the evidence of Paliben Amratbhai, P.W.2 at Exhibit 13, who is mother of the deceased, has categorically narrated the factum of,, marriage between the deceased and the present accused and has stated that after performing her customary rituals of â??aanaâ?, she was residing,, with accused in Khokhara, Ahmedabad. She has stated that after four years of marriage of deceased, she has died and during this course, accused,, was not visited her parental home. She has stated that the accused has a business of tuition class and for that, he demanded money from the deceased,, and for that purpose, he has given physical and mental harassment and cruelty to the deceased and the deceased used to tell this fact to her parents.",, She has stated that the accused was telling her that she did not bring money, then, there would be no good relationship between them. She has,, narrated the fact that the community meeting was held at Unjha and there was settlement between the parties in the said meeting. She has narrated,, the facts that her son-in-law has filled up the form of PSI and at that time, he insisted the deceased to bring Rs.1,00,000/- to Rs.1,50,000/- from her,, parents and told her that if she did not bring the amount, then, there would be no relationship with her. She has stated that the deceased came at her,, parental home and told all this fact to her, but they have no sufficient money and, therefore, they did not pay the same and, thereafter, the deceased,, went to her matrimonial home without money and, thereafter, after passing of

one month thereof, the present incident has occurred. She has stated",,,
that on the next day of the incident, she came to know about the incident from her husband. She has admitted that after six months of the marriage",,,
the customary rituals of 'aana' was performed. She has admitted that at the initial stage, the deceased was studied upto B.A. and she has",,,
completed her M.A. Degree, that too, after marriage. She has stated that when the present accused started business of tuition class, he has demanded",,,
the amount from Binaben. She has stated that at the time of marriage, son-in-law was studied upto B.A. She has shown her ignorance as to whether",,,
her son-in-law has appeared in examination of PSI or not. He has stated that whenever the deceased used to come to parental home, she was only",,,
telling regarding the demand of money and not regarding any other facts. She has stated that they have not paid any amount to the son-in-law. It also,,
reveals from her evidence that the native of the accused is Village : Unava and the in-laws of the deceased are residing at Unava. It appears from the,,
evidence of this witness along with the police witness that she has made improvement regarding narration of the ill-treatment and the accused telling,,
the deceased that if no amount is brought, then, there would be no relationship between them.",,,

23. On perusal of the evidence of Vithalbhai Pitambardas Patel, P.W.3 at Exhibit 14, who is maternal uncle of the deceased, it appears that he has",,,

deposed on the line of the above two witnesses and has stated that occasionally the deceased came to his house and told him that there is some,,
economic scarcity and, therefore, the present accused demanded the amount and at that time, he used to persuade the deceased and, therefore, she",,,
used to go back to her matrimonial home. He has stated that on the day of incident, Satishbhai told him that deceased has committed suicide.",,,

23.1 In his cross-examination, he has stated that he was present till postmortem was over. He has stated that at that time, the police might have come",,,

there, however, he has no conversation with the police. He has stated that the complaint came to be filed by his brother-in-law, but, the police has not",,,
narrated the facts as per their version. According to him, the police has advised to settle the dispute between the parties and they did not agree to that.",,,

He has stated that during the marriage life, the deceased Binaben was used to come to his house and has also stated that the accused has also visited",,,

his house along with the deceased. He has made allegation against the police. However, this fact has not been narrated by the complainant with whom",,

the present witness has accompanied to the concerned Police Station.,,

23.2 Thus, from the evidence of this witness, it appears that the grievance raised by the parents that the deceased was not permitting to visit the house",,

of this fellow is washed off. Whereas, the present witness has categorically stated that the deceased and the present accused have visited his house",,

and no grievance is raised by the deceased regarding ill- treatment.,,

24. On perusal of the evidence of Miteshkumar Purushotamdas Patel, P.W.4 at Exhibit 15, it appears that he has deposed that at the relevant time, he",,

was serving as a Clerk in Visnagar Nagarik Bank and his marriage was solemnized at Unava and name of his wife is Bhavnaben and the deceased is,,

his sister-in-law. According to him, the marriage of deceased Binaben was performed in 1997-1998 along with the present accused. At that time, the",,

accused was residing at Khokhara, Ahmedabad and the deceased has no child. According to him, Binaben was used to come to their house where",,

she was telling him that her husband was not calling her properly. He has stated that due to meeting of the community, a settlement has been arrived",,

at between them and he himself did not go to Unjha. He has stated that after such settlement, Binaben came at his house and told him that her",,

husband has physically beaten her and demanded the amount. This fact was specifically stated by Binaben to him and, thereafter, she was persuaded",,

to go to her matrimonial home. He has stated that this incident has happened six months prior to the present incident. Regarding another incident of,,

demanding amount by the accused was for filling up the form of examination of PSI. He has stated that he got information that the deceased has,,

committed suicide and, therefore, he went to the Civil Hospital where his in-laws and other relatives were present and, thereafter, after performing",,

postmortem, the dead body of the deceased was taken away by in-laws of the deceased.",,

24.1 During his cross-examination, he has admitted that when the marriage of the deceased was performed with the present accused, she was studied",,

upto B.A. and she has completed M.A. Degree, while staying at Unjha. He has admitted that during her marriage life, the deceased used to come to",,

his house and he has not given any amount to the deceased. He has stated that

in the Civil Hospital, five to seven persons were present there and only",,,
police personnel was present there. He has stated that at that time, his father-in-law has not made any complaint to the police regarding cruelty to the",,,
deceased. He has stated that they all were went to the Police Station from the Civil Hospital and they stayed at the Police Station upto 4.00 pm on the",,,
same day and at that time, the police has interrogated him and his statement was recorded and accordingly, the statements of other relatives and",,,
father-in-law were also recorded.,,,

24.2 Thus, from the evidence of this witness, it is clear that one of the allegations which is raised during the course of the deposition by the father and",,,
mother of the deceased that the accused side was not permitting the deceased to visit the house of her sister, is not supported by the witness. The",,,
witness has categorically stated that the deceased used to come to his house frequently and the accused was also visited the house of this witness.,,,

25. On perusal of the evidence of Dr.Jayantibhai Virjibhai Satapara, P.W.5 at Exhibit 23, it appears that he has, in his deposition, stated that he has",,,
performed the postmortem of the dead body of the deceased and found that injury, which was on the dead body, was sufficient to cause death and",,,
according to his opinion, such injury could be possible, while hanging and it was sufficient to cause death.",,,

26. On perusal of the evidence of Rameshbhai Ranchhodbhai Patel, P.W.6 at Exhibit 25, who is panch witness, it appears that he has deposed that he",,,
was residing adjacent to the place of incident. He has stated that the police did not call him at the place of incident. But, the police has obtained his",,,
signature at his own house. According to him, the place, where the incident was occurred, is 60 feet away from his house. He came to know that one",,,
lady has committed suicide by hanging herself and name of that lady was Binaben and her husband's name was Kirankumar. He has stated that there,,
was mob at the place of occurrence and he did not go there. However, the police told him that he should sign and, therefore, he put his signature on",,,
the panchnama. He has not supported the basic version of the prosecution that the panchnama of the scene of offence was drawn in his presence.,,,
Therefore, he has been declared hostile and he has, thoroughly, been cross-examined by the prosecution. However, in such cross-examination, he has",,,
not supported the version of the prosecution.,,,

27. On perusal of the evidence of Babubhai Mohanlal Jasani, P.W.7 at Exhibit 26, who is panch witness, it appears that the panchnama was carried",,,
out in his presence.,,,

28. On perusal of the evidence of Talaji Pratapji Vaghela, P.W.8 at Exhibit 27, it appears that he has stated in his deposition that on 16.01.2001, he",,,
was serving as P.I. in Amraiwadi Police Station and he has carried out the investigation and during the investigation, he has recorded the statements",,,
of various witnesses and drawn panchnama and arrested the accused and after having found sufficient evidence, the charge-sheet came to be filed",,,
before the concerned Court. He has stated that as per the averments, the deceased has committed suicide by closing door from inside.",,,

28.1 During his cross-examination, the improvement made by the various witnesses including the complainant have been brought on record. According",,,
to him, the relatives of deceased, who are examined in the matter, have not stated before him as to the meting out cruelty to the deceased by the",,,
accused for not giving money.,,,

29. On perusal of the evidence of Rafikuddin Amiruddin Kadari, P.W.9 at Exhibit 28, it appears that he has deposed in his evidence that at the",,,
relevant time, he was serving as Assistant Police Commissioner at Ahmedabad and he has recorded the complaint of Amrutlal Madhavlal Patel and",,,
thereafter, it was handed over to P.I. Shri Vaghela for investigation. According to him, the complaint was written before him as per the version of the",,,
complainant.,,,

29.1 During his cross-examination, he has stated that he got information of the incident on 15th January and initially, the incident was recorded as",,,
accidental death. He has stated that on 15th January, he has perused the case papers of the accidental death. He has stated that he has visited the",,,
scene of offence and recorded the statements of the neighbours and, thereafter, on 16th January, complainant came before him and lodged the",,,
complaint.,,,

30. It is an admitted fact that the deceased has committed suicide by hanging herself and at that time, the door was closed from inside. Thus, the",,,
factum of commission of the suicide is not in dispute. The question is regarding the fact that whether the accused has driven the deceased to commit",,,
the suicide or not. The factum of cruelty which driven the deceased to commit

suicide is required to be brought on record. It is also well settled that,,
the evidence of each witnesses must be cogent, reliable and trustworthy. It is
also well settled that the evidence shall be direct evidence and if any",,,
reliance is to be placed upon hearsay evidence, than, such hearsay evidence
needs to be supported by other evidence on record. Now, admittedly, in",,,
the present case, there is no direct evidence regarding physical and mental
cruelty to the deceased and demand of any money by the accused during",,,
the marital life. The entire evidence of the prosecution is based on hearsay
evidence in nature as the witnesses who have narrated the factum of,,
physical and mental cruelty meted out to the deceased and of demanding money
for the business of tuition class by the accused and for appearing in,,
examination of PSI is rested upon the version given by the deceased to her near
relatives. Therefore, the evidence of father, mother, brother-in-law",,,
and maternal uncle are required to be appreciated on the touchstone of reliability
and trustworthiness.,,,

31. Now, on considering the evidence coupled with the various decisions referred
to hereinabove, it is crystal clear that the marriage of the deceased",,,
was solemnized in 1998. Initially, the deceased was residing at her parental
home and after performing customary rituals of â??aanaâ?,, she went to",,,
her matrimonial home and she has remained stayed for sometime and,
thereafter, she came back to her parental home. It also reveals from the",,,
evidence on record that she has persuaded her M.A. Degree after marriage and
at that point of time, she was residing with her parents. The evidence",,,
on record also reveals that the father, mother and matrimonial uncle have made
improvement and addition in their depositions regarding the facts of",,,
physical and mental cruelty to the deceased and demand of amount, which facts
they have not narrated before the police officer. The evidence also",,,
discloses the fact that the deceased was permitted to visit houses of her
matrimonial uncle and her elder sister. However, the father and mother of the",,,
deceased have deposed that she was not permitted to go her elder sister's house
and maternal uncle's house. The evidence of the father and mother,,
are not reliable and trustworthy.,,,

32. Now, admittedly, in this case, the deceased has died and, there is no any
dying declaration of the deceased. Therefore, the evidence of the other",,,
witnesses in the shape of near relatives of the deceased is required to be

scrutinized. Now, on doing so, it appears that the near relatives of the",,,
deceased have made improvement and addition in their evidence, as referred to
above. On scrutiny of such evidence, it is clearly found that their",,,
evidence is not cogent and reliable.,,,

33 It also reveals from the evidence that at the time of marriage, the deceased
was studied upto B.A. and after her marriage, she was persuaded her",,,

study upto M.A. Degree. It also reveals from the evidence that though the
marriage life is alleged to be of four years, but, on close scrutiny of the",,,

evidence, it appears that she has resided with the present accused for little
period only and she has persuaded her M.A. Degree when she was at",,,

Unjha i.e. her parental home and remained most of period at her parental home.,,,

34. On re-appreciating the evidence on record, it clearly emerges that the
evidence of near relatives are not trustworthy and reliable. On perusal of",,,

the impugned judgment and order of the Trial Court, it clearly transpires that the
Trial Court has not considered aforesaid legal and factual aspects in",,,

its proper perspective and has committed serious error of facts and law. The
impugned judgment and order of the Trial Court is not sustainable in the",,,

eyes of law However, at this stage, it is pertinent to note that the judgment and
order of acquittal of remaining co-accused is not challenged by the",,,

State and no any cross-appeal is filed against the present accused. As such, the
impugned judgment and order, so far as it pertains to the present",,,

accused, warrants interference and deserves to be quashed and set aside.",,,

35. In view of the above, the present appeal is liable to be allowed and
accordingly, the present appeal is allowed. The impugned judgment and order",,,

dated 25.05.2004 passed by the learned Sessions Judge, Court No.1,
Ahmedabad City in Sessions Case No.260 of 2002 is hereby quashed and set",,,

aside. The appellant â?" original accused is acquitted from the charges leveled
against him for the offence under Sections 306 and 498A of the Indian",,,

Penal Code. Fine, if any, paid by the appellant â?" accused to be refunded to him.
Bail bond, if any, stands cancelled. Record and Proceedings to be",,,

sent back to the Trial Court forthwith.,,,