

(2025) 08 GUJ CK 0920
In the Gujarat High Court

Case No : R/Criminal Appeal (Against Conviction) No. 157 Of 2016

Motibhai Masarabhai Meghval (Paregi)	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 25-08-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 162, 209, 313, 374, 428
Indian Penal Code, 1860 — Section 201, 302, 316, 498A

Citation : (2025) 08 GUJ CK 0920

Hon'ble Judges : Ilesh J. Vora, J;P. M. Raval, J

Bench : Division Bench

Advocate : Chetan K Pandya, Jay Mehta

Final Decision : Allowed

Judgement

P. M. Raval, J

1. The present appeal is preferred by the appellant -original accused under the provisions of Section 374 of the Code of Criminal Procedure 1973 against the judgment and order of conviction and sentence dated 4.1.2016 passed in Sessions Case No.227 of 2015 (old No.220 of 2014) by the learned Additional Sessions Judge, Deodar.

2. The facts shorn of unnecessary details as they reveal from the documents are as follows :

2.1 Nagaram Pirathi Meghval - complainant lodged the FIR with Tharad Police Station which was registered as CR No.I-155 of 2014 for the alleged commission of offence punishable under sections 498-A, 302, 316 and 201 of Indian Penal Code inter alia alleging that for the last approximately eight months before filing of the FIR, the accused suspected character of deceased Keliben (daughter of the complainant) at the instigation of his family members and used to physically abused and mentally harassed the deceased. It is further alleged that on 28.6.2014 at about 10.30 O'clock when the deceased was in her hut which is in

his field known as "Vadiya" situated in the sim of village Bevta, the accused - present appellant gave kick blow on the abdomen of the deceased and strangled her and thereby committed the offence of culpable homicidal death. It is the case of the complainant that at the time of her death, the deceased was pregnant and therefore child in the womb also expired. It is further alleged that the present appellant - original accused tried to label the said incident as suicidal death by hanging his wife and thereby destroyed the evidence.

2.2 After thorough investigation, chargesheet came to be submitted before the concerned jurisdictional Magistrate, Tharad and since the case was exclusively sessions triable, learned Magistrate, Tharad committed the said case to the learned Sessions Court as per the provisions of section 209 of the CrPC and the same came to be registered as Sessions Case No.220 of 2014. However, the same came to be renumbered as Sessions Case No.227 of 2015.

2.3 Vide Exh.4 charges were framed for the offence punishable under sections 498-A, 302, 316 and 201 of IPC and vide Exh.5, plea of the accused was recorded where he denied the charges and prayed for trial.

2.4 To bring home the charges against the appellant accused, the prosecution relied upon the following oral as well as documentary evidences.

ORAL EVIDENCES :

Sr.No.

Name

Exh.

1

Deposition of witness - Dr. Bhavikkumar Dashrathbhai

7

2

Deposition of complainant - Nagaji Piraji

9

3

Deposition of panch witness - Mafaram Manjibhai

14

4

Deposition of witness - Chhaganji Piraji

16

5

Deposition of panch witness - Arjanji Juvarji

17

6

Deposition of Maviben Lasaji

20

7

Deposition of witness - Chenaram Piraji

21

8

Deposition of witness - Pankhiben Nagaram

22

9

Deposition of witness - PSO Gulabsinh Chelaji

23

10

Deposition of witness - IO - Maganbhai Kalabhai

27

DOCUMENTARY EVIDENCES :

Sr.No.

Name

Exh.

1PM Note8

2Original Complaint10

3Panchnama of dead body of the deceased15

4Panchnama of physical verification of the body of accused18

5Suchipatra24

6Yadi for filling up Inquest25

7Special Report for severe offence26

8Inquest Report of Keliben28

9	Receipt for taking over the dead body	29
10	Receipt for receiving dead body of Keliben by guardian	30
11	Report for paying visit by FSL Officer	31
12	Report of FSL Officer	32
13	Report for addition/deletion of section	33
14	Receipt for receiving FSL	34
15	Despatch note of FSL Muddamal	35
16	FSL Receipt	36
17	Report of visiting place	37
18	Report of FSL Biology	38
19	Report of Biology Department	39
20	Serological Report	40

2.5 Vide Exh.41, the prosecution preferred the purshis declaring that the prosecution does not want to examine witness any further and thus, after recording the said closing purshis, further statement of the accused under the provisions of section 313 of CrPC came to be recorded and after hearing learned advocates for both the sides, vide the impugned judgment and order convicted the appellant - original accused as under.

Section

Sentence

Fine in Rs.

Default sentence

302 IPC

Life Imprisonment

10,000/-

3 months SI

316 IPC

7 years RI

7000/-

2 months SI

201 IPC

5 years RI

5000/-

1 month SI

498A IPC

3 years SI

3000/-

15 days SI

Learned trial Judge also gave benefit under section 428 of CrPC and also ordered that all the sentences be run concurrently.

3. It is against this judgment and order of conviction that the appellant - original accused has preferred the present appeal.

4. Learned advocate Mr.Chetan Pandya appearing for the appellant - original accused would contend that :

(a) That except inquest panch, none of the panch witnesses have supported the case of the prosecution, more particularly, panch witness of panchnama of physical verification of the accused.

(b) That there are no eye witnesses in the present case and entire case is based on circumstantial evidence. However, chain of circumstances is not proved either independently or collectively so that they point finger of guilt towards the accused. Hence, in such circumstances, conviction recorded by the learned trial Judge is erroneous.

(c) That PW 2 - Nagaji Piraji who is the first informant and father of the deceased has reached at the place of incident after he was informed and that allegations of quarrel are against aunt of the appellant. However, this witness does not disclose as to how he came to know that the accused has kicked on the abdomen of his daughter. Thus, non-disclosure of source of information by the complainant that too also by the hearsay witness is not helpful to the prosecution.

(d) Learned advocate has drawn attention of this Court towards the deposition of PW 4 at Exh.16 i.e. Chhaganji Piraji who is uncle of the deceased. Similarly, he also reached at the place of incident after he was informed and has alleged that the deceased was beaten by the accused. However, what is the source of information has also not come on record. Therefore, allegations of beating are not proved.

(e) Chenaram Piraji PW 7 who is also uncle of the deceased has similarly reached at the place of incident only after he was informed. However, this witness does not disclose any information with regard to harassment while the deceased visited his home. However, according to him, the deceased was beaten and

hanged, but does not disclose as to how this fact came to his knowledge.

(f) That Pankhiben Nagaram - PW 8 who is the mother of the deceased also reached at the place of incident after having been informed. However, she also does not disclose about any harassment while the deceased was visiting her maternal home. She in her deposition states that she came to know about strangulation of daughter and having been killed from others.

(g) Learned advocate for the appellant has further drawn attention of this Court towards the deposition of independent witness i.e. PW 6 - Maviben Lasaji who is land owner where the deceased was residing in hut. However, she has turned hostile and despite having been cross examined by the Public Prosecutor has not supported the prosecution case.

(h) Learned advocate for the appellant has further argued that on going through the deposition of Dr.Bhavinkumar - PW 1 though postmortem note is proved and exhibited at Exh.8, however, cause of death was kept pending and as per Exh.28, letter was addressed by the Medical Officer of Referral Hospital to the Police Sub Inspector of Tharad Police Station informing "we are not able to give final cause of death". In such circumstances, whether the death was homicidal, accidental or culpable homicidal is not proved.

(i) Lastly, it is argued that police witnesses are formal witnesses. However, learned trial Judge relied upon such witnesses as contended by the present appellant. Under such circumstances, the prosecution having failed to prove the entire chain of circumstances and also the nature of death of the deceased and also failure on their part to prove cruelty meted out by the appellant has argued to allow the present appeal.

5. Learned APP Mr.Jay Mehta has argued that relying upon the evidence on record, learned trial Court has recorded the findings and has given sound and well reasoned judgment by analyzing the oral as well as documentary evidences in its proper perspective, more particularly, in paragraphs 28 to 30 and has convicted the appellant and has argued to reject the appeal.

6. Heard learned advocates for the respective parties. We have gone through the Record and Proceedings of the case as well as impugned judgment.

7. We have also perused the oral as well as documentary evidences led by the prosecution before the learned trial Court.

Analysis of the witnesses examined by the prosecution :

8, PW 2 - Nagaji Piraji - complainant (father of the deceased). At the outset, it is required to be noted that none of the witnesses have been cross examined at length. However, on perusing the examination-in-chief, this witness has stated that:

"I have two sons and five daughters. Out of which, eldest is Keliben. She was married six years back with Motiji, resident of village Bevta. They are having one

daughter and one son. She used to stay together with family. She came to meet me 15 days back. Whenever Keliben came to meet me, she used to inform that her aunt-in-law and one other used to scold them. Except this, nothing was done to her. The incident took place 12 months before where I was at my residence. That father-in-law of my daughter informed me that Keliben has been killed. At that time, I had gone to Bevtā at 4.00 O'clock. Keliben was inside the hut and was pregnant. She died because she was kicked. She was lifted and an attempt was made to hang her. In this regard, I had lodged the complaint before the Tharad Police Station. I have been shown mark 3/2 which is original complaint and is bearing my thumb impression which is produced and exhibited at Exh.10."

From the deposition of this witness, it is clear that even if some cruelty was meted out, it was by the maternal aunt of the accused and someone else. The deposition does not disclose any mental or physical harassment by any of the family members of the deceased since what is stated is "Bola Chali". However, as to who kicked the deceased is not coming forth from the evidence of this witness nor the source from where he came to know is coming on record, more particularly, when he was at his residence. In such circumstances, coupled with the fact that this witness himself has stated that her daughter used to stay with the family members together. However, on perusal of Exh.10 - complaint, it is stated that uncle and aunt of the accused used to stay beside the residence of the accused and that daughter, son, father, mother, accused and his deceased wife used to stay together in joint family.

9. PW 3 - Mafaram Manjibhai Meghval is the panch of inquest panchnama. On going through the deposition of this witness, he has stated that on 29.6.2014 when he was present at the Government hospital, one dead body of lady came to the hospital which was injured on leg, thigh and stomach with marks and her name was Keliben for which panchnama was prepared and I had put thumb impression. However, in the cross examination, he has admitted that for what purpose, he has put thumb impression is not known to him. Such inquest panchnama was exhibited at Exh.15. However, this panchnama does not take forward the case of the prosecution except for the fact of status of dead body since no belongings were recovered from the dead body.

10. PW 4 - Chhaganji Piraji Meghval is the uncle of the deceased. He has deposed to the effect that :

"we are five brothers. I have four sons and two daughters. My eldest daughter Keliben was married to the son of Mashabhai Vaghaji i.e. Motibhai at village Bevtā six years back. She used to live with her son and daughter. The incident took place almost 14 months back. On the day of incident, they came at 5.00 O'clock from Achalpur. From Achalpur, they went to Bevtā. There were number of people along with him. We had gone to the farm of Patel at Bevtā. There was one four feet high otla. Keli had erected one hut in the said field where I had seen Keli and was lying dead. Moti had killed Keli. The police had taken my statement. I know the accused."

In the cross examination, this witness has admitted that he has not seen the incident happening with his eye. From the deposition of this witness, how did he come to know that the deceased was killed by Moti is not coming on record.

Thus, what is source of information or how did he come to know regarding murder of the deceased having been committed by the present accused is not proved. The factum of cruelty is also not proved from the deposition of this witness.

11. PW 5 - Arjanji Juvarji has been examined at Exh.17. This witness is the panch of place of incident and physical verification of the person of the accused and recovery of clothes of the accused at the time of arrest. However, this panch has not supported the case of the prosecution and has merely identified the signature. Thus, this witness does not take forward the case of the prosecution any further. Though the panchnama of the place of incident is at Exh.18 and that of the physical verification of the person of the accused is at Exh.19, the contents thereof are not proved.

12. PW 6 - Maviben Lasaji Patel has been examined at Exh.20 who is the owner of the land where the deceased used to stay by erecting hut. This witness has also not supported the case of the prosecution and has turned hostile. She does not utter a single word with regard to the alleged incident of the appellant kicking on the abdomen of the deceased and that of meted out any cruelty to her either by the accused or family members of the accused.

13. PW 7 - Chenaram Piraji Meghval has been examined at Exh.7 who is the uncle of the deceased. The witness has deposed to the effect that :

"we are five brothers, eldest is Chhaganram, then myself and younger brother than me is Nagaram. We all residing separately. My brother Nagaram is having two sons and five daughters. The eldest daughter being Kedi who was married with the son of Masarabhai Vaghaji i.e. Motibhai. Out of this wedlock, Kedi has one son and one daughter. Whenever she used to come to our house, she did not inform anything to us. I was informed with regard to the incident by Raghunath on telephone and therefore, I along with my brother had gone there and on seeing, Keli was lying in the hut and was dead. As per my say, Keli was killed and was hanged. The police has recorded my statement and I know the accused."

On going through the entire examination-in-chief, this witness does not disclose as to how he came to know that the deceased was murdered and then hanged. This witness also does not speak a single word with regard to any cruelty meted out to the deceased by any of the members including the present accused.

14. PW 8 - Pankhiben Nagaram has been examined at Exh.22 who is the mother of the deceased. She has deposed to the effect that :

"I have five daughters. Keli is the eldest. Six years before she was married to the son of Masarabhai Vaghaji i.e. Motibhai. Keli has two issues, one son and one daughter and at the time of incident, she was pregnant. My daughter frequently

used to visit us. When she used to come our residence, she did not complain. Chenaram had informed with regard to the incident and therefore, along with husband and other family members, we had gone to village Bevtā. No one has informed us anything. We came to know from word to mouth that my daughter has committed suicide. That my daughter was responsible person. She has been killed by beating her. The police has taken my statement. I know the accused."

Even from the entire deposition of this witness, how did she come to know about the factum of accused having been injured and killed is not coming on record. As far as allegation of cruelty is concerned, not a single word has been uttered by this witness. Thus, mother of the deceased is also not aware as to how the incident has taken place nor does she has source of information nor does she discloses the factum of any cruelty meted out by any of the family members including the present accused.

15. PW 9 - Gulabsinh Chelaji has been examined at Eh.23. The witness is PSO who has registered the FIR. His entire deposition is formal in nature and has not been discussed hereinafter.

16. One of the important aspects which reflects from the judgment itself, more particularly, from paragraphs 28 and 29 is that learned trial Court has given findings to the effect that vide Exh.9, the complainant has been examined who has stated that she was married six years back and that incident took place one year back and she used to reside in joint family. That she has come to meet 15 days back and at that time, she had informed that aunt of the deceased and one other used to quarrel with her and thus, has given finding to the effect that the deceased was meted out with cruelty. It is pertinent to note that aunt of the accused is not the accused in the present case and that the prosecution has not given any application to join her as accused. Even otherwise, if the deposition is taken as it is, it does not bring on record any cruelty meted out to the deceased by the aunt also since merely scolding would not amount to cruelty to the deceased. Learned trial Court has further recorded the findings that when one woman is murdered by the husband, it is to be presumed that relation between them are strained. This assumption cannot stand for a moment because what is to be proved by the prosecution is the case beyond reasonable doubt. A judge cannot merely convict the accused without there being any legal evidence on record based on morality, ethics or assumption. If the impugned judgment is further read, it clearly transpires that similarly relying upon various depositions, more particularly, Exh.9 that of the complainant, Exh.16 that of Chhaganji, Exh.22 that of Pankhiben, the mother of the deceased has given the findings to the effect that Keliben was murdered by the present accused. However, as noted hereinabove, even if the depositions of all the witnesses are taken as it is, not a single witness has been able to bring on record as to how the deceased was murdered. Under such circumstances, the findings given by the learned trial Court are perverse.

17. Learned trial Court has further stated in paragraph 29 of the impugned

judgment that vide Exh.20, Maviben has been examined and though she has turned hostile has further recorded in the reasoning to the effect that vide Exh.27, the Investigating Officer - Maganbhai Kalabhai has been examined who has recorded the statement of Maviben and has stated in his deposition as to what Maviben had stated to this Investigating Officer under the provisions of section 161 of CrPC and based on such evidence, learned trial Court has convicted the present accused.

18. At this juncture, in the judgment in the case of Renuka Prasad vs The State Represented by Assistant Superintendent of Police, reported in 2025 SCC OnLine SC 1074, the Honourable Apex Court clarified that the testimony of investigating officers (Ios) regarding witness statements recorded under Section 161 of the Criminal Procedure Code (CrPC) is inadmissible as evidence in Court. The Court highlighted that statements made by witnesses to police officers during investigation under section 161 CrPC have no evidentiary value in Court unless the witnesses themselves confirm these statements during the trial. In the said case, a significant number of witnesses, including the crucial eyewitnesses, turned hostile, denying their earlier statements made before the IO under provisions of Section 161 CrPC. The Supreme Court noted that the prosecution's attempt to rely on the investigating officer's version of these statements was a clear violation of Section 162 CrPC. The Apex Court emphasized that the IO's testimony, which merely repeated the Section 161 statements of witnesses, could not be treated as credible evidence. The Court stated : "Merely because the Ios spoke of such statements having been made by the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission.....". The Supreme court reiterated the legal principle that statements recorded under Section 161 CrPC are only meant to assist in investigation and cannot be used as substantive evidence. Such statements may only be used to contradict a witness during trial, as per Section 162 CrPC.

19. Keeping in mind the aforesaid principles and as noted hereinabove, when none of the witnesses have supported the case of the prosecution, findings recorded by learned trial Court with regard to sections 498-A, 316, 302 and 201 of IPC are clearly not tenable, more particularly, keeping in mind the aforesaid principles, the statement recorded under section 161 of CrPC during investigation cannot be used as substantive piece of evidence, but can only be used to contradict the witnesses during the trial as per the provisions of section 162 of CrPC. Any conviction based on the statement having been made by the Investigating Officer recorded by him under section 161 of CrPC cannot be relied upon to bring home the charge. When the learned trial Court has handed down the conviction based on such deposition of the Investigating Officer, the same cannot be sustained.

20. In view of the aforesaid facts and circumstances of the case and reasons, the present appeal succeeds and the same is allowed. The impugned judgment and

order of conviction and sentence dated 4.1.2016 passed in Sessions Case No.227 of 2015 (old No.220 of 2014) by the learned Additional Sessions Judge, Deodar is quashed and set aside. The appellant is acquitted of the charges levelled against him. If the appellant is in custody, be released forthwith and if on bail, his bail bond stands cancelled. R & P, if any, be sent back forthwith.