

(2008) 10 GUJ CK 0076
In the Gujarat High Court
Case No : Criminal Appeal No. 806 of 2002

Rajendrabhai D. Makwana and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 10-10-2008

Acts Referred:

Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 107, 306, 498A

Citation : (2010) 1 DMC 213 : (2009) 2 GLR 961

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : K.K. Pandey,s 1 - 5, for the Appellant; U.R. Bhatt, APP for Opponent 1 and M.M. Tirmizi, for Opponent 1, for the Respondent

Judgement

A.L. Dave, J.—Lilaben, daughter of complainant Babarbhahi Govindbhahi Gohil, was married to original accused No. 1 on 31/5/1991. Accused appellant No. 1 and Lilaben were staying at Thanklessly near the house of complainant Babarbhahi Govindbhahi Gohil. Parents of accused appellant No. 1 Devajibhai Prabhubhai Makwana and Kashiben Devajibhai Makwana are staying at village Ikhar, District Bharuch, which is at a distance of about 30 Kms from Ankleshwar and elder brother of accused appellant No. 1 Kanchanlal Devajibhai Makwana and his wife Taraben stay at Bharuch; whereas younger brother of accused appellant No. 1 Girishbhai Devajibhai Makwana stays at Ikhar.

1.1. Lilaben committed suicide at her home on 8/6/1999 around 1300 hours by hanging herself by neck with the fan. On being informed about the incident, Babarbhahi Govindbhahi Gohil, father of the deceased immediately informed the police and the police recorded his information and registered offence. Investigation was started. It was found that the deceased had locked herself into the house and then committed suicide. Therefore, the witnesses broke the window pan and saw her hanging. Thereafter, they broke open the door and went into the house. It was found that the deceased had hung herself to the ceiling

fan with the help of a nylon rope which was formerly used for drying clothes. Photograph of the dead-body was also taken. Inquest panchnama was drawn and the dead body was sent to Civil Hospital, Bharuch for post mortem. Doctor opined that the deceased died of asphyxia due to hanging. When the dead body was being examined by the doctor for post mortem, a chit was found under the undergarment wore by the deceased which was given by the doctor to the attendant, who in turn gave it to the P.S.O. And P.S.O. In turn gave it to the Investigating Officer [IO]. That chit was identified to have been written by the deceased considering the handwriting by the complainant. It was then sent to FSL along with natural writings of the deceased in form of a note-book and some record of the school where the deceased was serving. The FSL report indicated that both the chit found from the person of the deceased and the writings in form of note-book and other registers, etc., of the school were handwritings of the same person.

2. According to the complainant, the deceased committed suicide because of the harassment and torture meted out to her by her husband, her parents-in-law, her two brothers-in-law and her sister-in-law. The contents of the chit indicated the reason for commitment of suicide as disclosed by the deceased and ultimately the police having found sufficient material against the husband of the deceased and her in-laws, filed charge-sheet in the Court of the Ld. Judicial Magistrate First Class, Ankleshwar, against the husband, her parents-in-law, his brothers-in-law and sister-in-law for the offences punishable under Sections 306 and 498A of the Indian Penal Code [IPC].

2.1. Ld. Magistrate committed the case to the Court of Sessions as the offences with which the accused persons were charged, were triable by Court of Sessions. The Sessions Court on the case being committed, registered Sessions Case No. 168/1999. The charge was framed against all 6 accused persons at exh. 2 for offences punishable under Sections 498A and 306 of the IPC. All the accused persons pleaded not guilty to the charge and claimed to be tried.

3. The trial Court, after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in establishing both the charges against the husband of the deceased, the parents-in-law of the deceased and brothers-in-law of the deceased; whereas the Court found that the case against sister-in-law of the deceased was not properly established. The Sessions Court, therefore, convicted all the accused persons except sister-in-law Taraben Kanchanlal Makwana for offences punishable under Sections 498A and 306 of the IPC, and sentenced them to undergo rigorous imprisonment [RI] for a period of 2 years and to pay fine of Rs. 500/- each, in default to undergo RI for 10 days for offences punishable under Sections 498A of the IPC and awarded sentence of 10 years RI with fine of Rs. 2,000/- to each of the appellants, in default to undergo RI for 15 days for offence punishable u/s 306 of the IPC. Aggrieved by the said judgment and order, present appeal is preferred. For sake of clarity, appellant No. 1 is the husband, appellants No. 2 and 3 are the father-in-law and mother-in-

law of the deceased, appellant No. 4 is the elder brother of appellant No. 1 and appellant No. 5 is the younger brother of appellant No. 1.

4. We have heard learned advocate Mr. KK Pandey for the appellants and Ld. APP Mr. Bhatt for the respondent - State. We have also examined the record and proceedings in light of and in context of what has been argued before us by both the sides.

5. Ld. Advocate Mr. Pandey has broadly raised the following contentions:

i] The complainant has falsely implicated the whole family except children

ii] The marriage span of appellant No. 1 and deceased was of 8 years and, therefore, presumption envisaged u/s 113B of the Indian Evidence Act would not be attracted

iii] The parental house of the deceased i.e., house of complainant is only 4 houses away from the house where the deceased and appellant No. 1 were staying

iv] All the accused persons are working either in Government or Semi-Government organizations except appellant No. 5 - Girish

v] The conviction is founded mainly on the chit found from the person of the deceased by the doctor purported to have been written by the deceased in form of suicide note.

5.1. Assailing the decision, Mr. Pandey submitted that the trial Court has overlooked the aspect that no written material was found from the room where the suicide was committed. That the said chit exh. 45 is written by red and blue pencil which is a rare article these days.

5.2. That the inquest panchnama does not speak of the presence of chit on the person of the dead body. Mr. Pandey submitted that the trial Court has overlooked the aspect that the dead body was lying unattended for a long time at the hospital before post mortem during which time the so called suicide note could have been planted.

5.3. Mr. Pandey also submitted that the suicide note exh. 45 is opined by handwriting expert to have been written by the same person who has written other natural documents, but there is no evidence to indicate that the so called natural writings were that of the deceased.

5.4. Ld. Advocate Mr. Pandey submitted that so far as allegation against appellant No. 1 is concerned, the trial Court has overlooked the aspect that nearly 7 years of marriage, there is no complaint against appellant No. 1 and there is no independent evidence to show this aspect. The only evidence is in the nature of deposition of the complainant, father of the deceased, who alleges that appellant was in habit of drinking and then meting out physical and mental ill-treatment to the deceased. Mr. Pandey submitted that it is a clear attempt to

falsely implicate all the members of the family.

5.5. Mr. Pandey submitted that the deceased and appellant No. 1 were staying separately from other appellants accused. The other accused persons are staying at distance places. They are in Government and semi-Government service and would hardly have any reason, cause or chance to visit the deceased and ill-treat her. Only 3 occasions which emerging from the evidence indicating presence of accused persons - one about a month and half prior to the date of incident, other is on 3rd of June 1999 and third occasion is 6th June, 1999. Mr. Pandey submitted that he cannot dispute that some dispute did arise on 6th June, 1999 and was of such a nature that appellant No. 1 was forced to leave the house and was constrained to issue notice through advocate on 7th June, 1999 addressed to the deceased and his in-laws. Mr. Pandey submitted that the suicide note exh. 45 even if taken at face value, would not implicate accused appellant No. 1 of any harassment or ill-treatment at his hands to the deceased.

5.6. The sum total of the arguments of the learned advocate Mr. Pandey therefore is that the prosecution case is founded on an FIR lodged by father of the deceased which is false. The prosecution evidence as emerging from record would not implicate the accused appellant No. 1 of any ill-treatment. The allegations against rest of the appellants are not founded or supported by any independent material. The conduct of the first informant is unnatural. On hearing about the deceased committed suicide by hanging, the complainant rushed to police station for registering FIR rather than rushing to his daughter. The entire deposition of the complainant, if read, would reflect an attempt on his part to insert articulated adjustments to suit his requirements. Ld. Advocate Mr. Pandey also indicated that if the photograph of the dead-body which was taken while the dead-body was hanging, is seen, it would show that the feet of the dead body were touching the floor. How in these circumstances, the deceased could have died asphyxia due to hanging is a question not answered by the prosecution. Ld. Advocate Mr. Pandey therefore, submitted that all these grounds, if examined from the record, would go to show that the prosecution case is wrongly held to have been proved against the appellants. The appeal, therefore, may be allowed. The conviction may be set aside and the accused No. 1, who is in jail pending the appeal, be released from the prison.

6. Ld. APP Mr. Bhatt has opposed this appeal. According to Mr. Bhatt, the suicide note exh. 45 would assume the colour of a dying declaration and since it has been appropriately proved to have been written by the deceased, it has to be treated as a substantive piece of evidence. Mr. Bhatt submitted that if exh. 45 is seen, it is the condensation of the sufferance of the deceased during her entire married life. Mr. Bhatt submitted that attempt on the part of the appellants to assail the genuineness of exh. 45 may not be accepted for the reasons that though inquest report does not speak of presence of the suicide note, it has been found by an independent witness like doctor performing post mortem and it has been then given to the police, which the police has seized at a later point of time

by drawing a panchnama. The inquest report if read, would go to show that the clothes were kept intact by panch witnesses while examining the dead body and, therefore, the presence of the suicide note under the bracer may not have been noticed by the panch witnesses at the time when the inquest report was drawn.

6.1. Mr. Bhatt submitted that so far as the handwritings are concerned, the expert from the FSL has opined that exhs. 45 to 51 are of writing from same person. It has come in evidence that exh. 46 to 51 are documents written by the deceased in natural course. These documents were brought before the Court from the school where the deceased was serving and, therefore, no doubt can be raised about the genuineness of these documents. The deceased was educated and serving in a school run by the panchayat. These documents are, therefore, public documents and would carry greater weightage. The trial Court, therefore, was justified in accepting the opinion of handwriting expert and holding that suicide note exh. 45 was written in the handwritings of the deceased. When this cogent evidence is on record, factors like not finding of a written material in the room where the suicide was committed, with red and blue pencils which is rare in these days, and that there is a possibility of planting of the chit where the dead body lying unattended at the hospital would spill into insignificance. The contents of exh. 45 would go to show that it is written within close proximity of time of suicide by the deceased. Mr. Bhatt submitted that the deceased was pregnant at the time when she committed suicide and no lady would take such an extreme step unless torture or harassment had crossed the threshold of tolerance. Mr. Bhatt therefore, submitted that the appeal may be dismissed and the conviction may be upheld.

7. We have taken into consideration rival side submissions. As has rightly been argued by both the sides, the prosecution case mainly depends on the evidence in form of suicide note exh. 45. We, therefore, propose to reproduce the same by translating it into English to the nearest possible extent, since the writing is in Gujarati vernacular:

My father-in-law, mother-in-law, younger brother-in-law all were harassing me ever since I went to my matrimonial house, even while I was to become a mother. Thereafter, he [reference is to her husband - appellant No. 1] was introduced to business and gave half of the money for the house. Now again while I am to become a mother, again money is demanded. My elder brother-in-law is serving here and, therefore, comes to house everyday and quarrels with me and goes away and asked me to bring money from my father. In spite of this, they all came and took away my husband. I am committing suicide because of such harassment. Lila.

8. The complainant Babarbai is examined at exh. 43. What emerges from his deposition is that about a month and half prior to the incident, Lila had gone to attend a domestic function in her matrimonial home while wearing ornaments and accused persons had a bad eye on the ornaments and, therefore, they instigated accused No. 1, as a result of which accused No. 1 consumed liquor and

physically and mentally ill-treated Lila. Lila had informed him and his wife and son Kishor and his wife about the incident. He refers to an incident dated 3/6/1999 where accused Nos. 2 to 6 had come to the house of accused No. 1 and had quarreled with Lila. Witness says that he therefore, went to the accused and inquired as to what is the problem and if they want anything he is ready to give. At that point of time he was informed that since the complainant has got constructed the upper storey of the house of his another son-in-law Pravinkumar, he also should get constructed upper storey on the house of accused No. 1 so that accused No. 6 can stay there and do some business. The complainant says that he, therefore, refused to do so and, therefore, accused No. 1 used to beat Lila of and on. He then refers to another incident dated 6/6/1999 when accused Nos. 2, 3 and 6 had gone to the house of accused No. 1 at Ankleshwar and had quarreled with Lila and went away. He says that since Lila was pregnant, he and Lila were tolerating the harassment. The complainant then states that on 8/6/1999 he had gone to the shop of Farooq and was sitting there and had discussed about the harassment being meted out to Lila by the accused persons. He also states that he had similarly intimidated Yatishbhai Jani, owner of Jani Restaura in the afternoon of 7/6/1999. On 8/6/1999 when he went to his home, he noticed that people had gathered and that his elder son-in-law Pravin and daughter Damayanti were crying. On being asked, they informed that Lila hung herself. He, therefore, went to the house of Lila and found that the door was closed from inside and on seeing from the broken window, he saw Lila hanging. He, therefore, went to Chauta Ankleshwar Police Station and lodged the FIR about physical and mental harassment and repeated demand of money and abetting the deceased Lila to commit suicide.

8.1. The witness then states that his further statement was recorded on 9/6/1999 by the police wherein he was shown a chit written by his daughter [exh. 45]. He identified the handwriting and signature of his daughter. Then he also identifies the writings in exhs. 46, 47, 48, 49, 50 and 51 to be that of his deceased daughter Lila. He says that he has received notice exh, 53 which was received by him around 4.30 p m on the day of the incident.

8.2. The witness has been subjected to cross-examination at length. He admits that in exh. 45 there is no allegation against accused appellant No. 1 by name about any harassment or ill-treatment. He also admits that in that chit it is written that all came and took my husband away. He admits about a suit having been filed by him against the accused appellant No. 1 in respect of house seeking injunction against sale bearing Civil Suit No. 169/1999. He also admits that he had applied to the Collector for cancellation of the stamp vendor's licence issued in favour of accused appellant No. 1. He also admits that appellant No. 1 has preferred an application under Guardian and Wards Act for the custody of his minor son, which the witness has opposed. He admits that when the inquest panchnama was prepared, no chit was found. According to him, the dead body was returned to them after post mortem at about 3.00 to 4.00 O'clock in the next morning and after the cremation, the chit exh. 45 was shown to him by

police. Said chit was shown to him from a Khakhi envelope, but he was not having knowledge whether it was sealed or not. He denies the suggestion that there was no dispute between appellant No. 1 and deceased, but the family members of the witness were harassing appellant No. 1 and wanted to drive him out. He also denies suggestion that the deceased was tired up for the harassment meted out to appellant No. 1 by the witness and his family members. The witness admits that accused appellant No. 1 had issued a notice which was replied to by the witness through his advocate about 5/6 years after marriage when the house was constructed and in that reply, it was stated under his instructions that the matrimonial life of the witness's daughter Lilaben and appellant No. 1 was going on well in the house.

8.3. The witness has denied suggestion that the exhs. 45 to 51 which he claims to have been written by the deceased are in fact not written in her hands.

8.4. Witness Kishorbhai Babarbai Gohil is examined at exh. 61. He is brother of deceased Lilaben. He is a Civil Engineer and is engaged in construction work. He claimed that deceased Lilaben had told him about 8 to 10 days prior to her suicide that the accused persons are causing physical and mental torture and harassment for a demand for money for construction of upper storey in the house. He states about the incident of 3/6/1999 when the accused persons came to his house and demanded money and quarreled therefor. The witness says that he has explained that he is only looking after the construction of Pravinbhai as a contractor and he is not spending for it and, therefore, if the accused persons wanted construction to be made in the house of appellant No. 1, he would undertake that work on concessional basis. He says that thereafter accused persons went away and again on 6/6/1999 father and brothers of appellant No. 1 came to the house of Lilaben and reiterated the demand and quarreled. At that time also they were told that they would extend all possible help. He says that he went to his construction site on 8/6/1999, his father had gone to Ankleshwar city for some work and around 12.30 to 1.00 O'clock in the afternoon people had gathered near the house of Rajendra - appellant No. 1 and was informed that Lilaben had hung herself in the house. He says that on 9/6/1999 he was shown a chit written by Lilaben, which is at exh. 45. He identifies the writings as that of deceased Lilaben. The witness has been put to cross-examination. During cross-examination, it emerges that on 6/6/1999 appellant No. 1 was at home, but on the day of incident, he was not at home. He says that he had gone to the house of Lilaben on 6/6/1999 at about 1.00 p m, at that time none except Lilaben and accused persons was present. He says that accused had given a notice which was received in the evening of 8th. The witness then says that he had gone to the house of Lilaben on the date of incident at about 1-00 p m and at that time dead body of Lilaben was hanging. The door was opened after lodgement of the FIR. He says that the police had brought out the dead body after about half an hour of his reaching the place. Till then the police was performing its duty drawing panchnama and taking photographs. He does not remember if any pencil was found near the dead-body. He does not remember the name of the panch

witnesses, but he remembers that there was a lady panch. He denies suggestion that exh. 45 is a concocted piece of evidence. According to him, the deceased was pregnant at the time of incident.

8.5. Witness Reshmaben Kishorkumar is examined at exh. 62, Krishnakant Parshottamdas Solanki is examined at exh. 64, Manjulaben Maganbhai is examined at exh. 68, Firdosh Mujbil Patel is examined at exh. 71 and Dalpatbhai Karshanbhai Makwana is examined at exh. 72, who all deposed on similar lines.

8.6. Witness Dilipbhai Manubhai, who is examined at exh. 70, is the police constable, works as a corpus bearer and took the dead body to the hospital for post mortem.

8.7. Dr. A P Gupta is examined at exh. 82. He is the doctor who had performed post mortem as a panelist with Dr. P P Joshi. The post mortem was performed at about 8.00 p m on the day of incident although the dead body was brought at 5-30 p m. Doctor states that at the time of performing the post mortem, it was noticed that the dead body was in white maxi, pink coloured bra and black penti. There was a letter in the bra. There were bangles on the hands, ear rings in the ears and a stud in the nose, besides, two anklets and two rings in the toes. Doctor says that he had collected all these articles and handed them over to constable Dilipbhai. Doctor also says that there are ligature marks around the neck and that the deceased died of asphyxia due to hanging. He proves the post mortem note at exh. 85. Doctor has been cross-examined and he says that he reached the hospital about half an hour prior to performing the post mortem. The dead body was brought to the hospital at about 5-30 p m and was lying in the post mortem room till he reached there at about 7-30 p m. He says that he had not gone to the post mortem room prior thereto, but he says that he is making the statement about the dead body lying in the post mortem room on the basis of his talk with Dr. Joshi.

8.8. The handwriting expert of the FSL is examined at exh. 110. He is the person who has inspected, examined, compared and opined about the writings found on documents exh. 45 to 51 and he in terms states that all these documents are written by the same person. Exhs. 46 to 51 are the documents which are adduced by the prosecution as documents containing natural writing of the deceased and exh. 45 is the suicide note found from her person by the doctor while performing post mortem. According to this witness, he has a vast experience of examining writings and after due scrutiny of these documents and inter-se comparison, he has come to conclusion that they are writings of the same person. Witness has been cross-examined and he admits that he has no personal knowledge on the question whether these writings were of deceased Lilaben. He says that they are on basis of comparison and has given opinion pursuant to communication from police. He denies the suggestion that he has not undertaken scientific comparison. His written opinion is at exhs. 112 and 114. These two documents would go to show that the witness has undertaken a detailed examination of these documents in a scientific manner.

8.9. The Investigating Officer is examined at exh. 118. He is Jagannath P. Ramlakhan. He says that clothes of the dead body and the chit found on person of the dead body were sent to FSL for examination. During cross-examination questions are put about the condition of the dead body in which it was found hanging. It was hanging from the ceiling fan and the photograph exh. 87 indicates that the feet were touching the floor. He states that exh. 45 is written in red and blue pencil and that no such pencil was found from the place of incident when the panchnama was drawn.

8.10. Witness Laxmanbhai Mulajibhai Vasava, Police Head Constable working as P.S.O on 8/6/1999 states that Police Constable Dilipbhai Manubhai had produced before him the Muddamal given to him by the Medical Officer found from the dead body. He says that he had taken possession thereof by drawing a panchnama in presence of two panch witnesses, which is at exh. 80. He has been subjected to cross-examination, but nothing material emerges therefrom.

9. If the evidence, as narrated above, is examined in light of the submissions made before us by rival sides, what emerges is that the marriage span of the deceased and appellant No. 1 was that of about 8 years and, therefore, the presumptive clause envisaged u/s 113A of the Evidence Act would not be attracted. We will have, therefore, to examine the evidence for material to attract the ingredients for the offences for which the accused appellants were charged.

10. The overall picture that emerges from evidence, other than exh. 45, is that there were no disputes between the deceased and accused persons until recent past of the date of incident. The witness i.e. The first informant, father of the deceased and his relatives so also the neighbours, speak of the disputes starting about a month and half prior to the date of incident. According to the first informant, the accused persons took an evil eye on the ornaments wore by the deceased on a social function and thereafter, they started demanding money and appellant No. 1 started harassing the deceased. The first incident, that is informed by the witnesses is of 3/6/1999 where all the accused persons came to the house of the deceased and appellant No. 1 and they had a quarrel over there and thereafter, they went away. What was the nature of the quarrel on that day is not emerging from evidence. And then the last incident is that of 6/6/1999 where father and brothers of appellant No. 1 are alleged to have come to the house of the deceased and appellant No. 1 and quarreled with them, but then they left. On the next day, appellant No. 1 issued a notice through an advocate to the deceased, the first informant and his family members alleging that he was driven out of the house on 6/6/1999 and was threatened that if he comes again, he would be falsely implicated in a criminal case or if he takes the deceased with him to Bharuch or Ikhar, he would take some drastic action and involve them in criminal case. This notice is received by the first informant on the day of incident i.e. 8/6/1999 after the deceased committed suicide. It has, therefore, been argued by the defence that accused appellant No. 1 was subjected to harassment and cruelty by the complainant and his relatives and was thrown out of the

house. There is no material to show any harassment on part of appellant No. 1. The rest of the appellants are staying separately at a distant places from the house of the deceased and appellant No. 1 and, therefore, it is clear case of false implication. To ascertain this aspect, apart from the oral evidence by the first informant and his family members and the neighbours, the Court will be required to examine the suicide note exh. 45, which is sought to be assailed on the ground that the opinion of the handwriting expert is not correct even if the writings are compared by the Court with bare hands. It is also stated that no writing material was found near the dead body when the panchnama was drawn and it is also contended that the writings exhs. 46 to 51 projected as natural writings are not proved to be natural writings of the deceased with cogent evidence. It is also contended that the suicide note was not found when the inquest panchnama was drawn, but is found only at the time of post mortem and there is possibility of such note being planted with a view to implicate the appellants.

11. We have examined the evidence relating to inquest panchnama and we find that at the time of inquest panchnama, the dead body was not thoroughly examined or frisked and obviously the suicide note which was under the bra of the deceased could not have been noticed by the panch. The dead body cannot be thoroughly examined for the reasons that the deceased was found to be hung herself and chances of other cause for death were minimal.

11.1. It was also then contended that the dead body was lying unattended at the hospital which exposed the dead body to the possibility of suicide note being planted on the dead body. However, we find that there is evidence to show that dead body reached to the hospital at 5-30 p m. Doctor who performed post mortem reached hospital at 7-30 p m and till then the dead body was lying in the post mortem room. There is no suggestion or not even the case that it was accessible. On the contrary, the evidence in this regard has been tested through cross-examination and it reveals that the cross-examination was of a fishing nature. What emerges is that the post mortem room is surrounded by bushes. That would not extend the theory of planting by somebody and the evidence of Dr. Gupta has to be scaled from the angle that he is an independent witness, has no axe to grind against the accused and has no reason to favour the prosecution. Added to this, is the evidence of handwriting expert. He in terms says that he has examined the writings of documents at exhs. 45 to 51 and has found the same to be written by the same person. Exhs. 45 to 51 are natural writings of the deceased in form of a note-book and certain other entries made in the registers of the school where she was serving. Even if we ignore the note-book; the registers and other documents, which are obtained from the school, are documents maintained by the school in its ordinary course of business. They are more or less of the nature of public documents. This aspect has not been challenged during cross-examination by the defence that these documents are not of the school or they are concocted. In this set of circumstances, if an expert of the FSL finds that exh. 45 and exhs. 46 to 51 are written by same person,

which are identified to be the handwriting of the deceased, as written in the registers of the school, it has to be accepted that exh. 45 is written by the deceased. The handwriting expert is a Government personnel and is an independent witness. He has no reason to depose against the accused and in favour of the prosecution and falsely implicate the accused persons. We also find that the expert has undertaken a scientific exercise to compare the writings as can be seen from the certificate issued by him and even from his deposition. We are, therefore, of the view that the trial Court was justified in accepting exh. 45 as the suicide note written by the deceased. We may also state that it would not be prudent to act on the suggestion made by the learned advocate for the appellants to compare the writings ourselves with bare hands and to discard the evidence of an expert.

12. Once it is found that exh. 45 is written with the hands of deceased, the fact that no writing material was found from the place of suicide, that red and blue pencils are rare to be found these days, would spill into insignificance.

13. If the contents of exh. 45 are seen, we find that it was written in close proximity of time of the incident. The last sentence says that for the reasons stated in the earlier part of the suicide note, the deceased was committing suicide. These words would indicate that it must have been written soon prior to the commission of suicide by the deceased.

14. Now the question that we would be required to examine is whether the contents of exh. 45 can be taken as sufficient to confirm conviction for offence punishable u/s 306 of the IPC, especially when the presumptive clause is not applicable to the facts of the present case. In this regard, we may refer to decision rendered in the case of Mahendra Singh and Another, Gayatribai Vs. State of M.P., That was a case where dying declaration made by the deceased read as under:

My mother-in-law and husband and sister-in-law [husband's elder brother's wife] harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

In such a situation, the Apex Court held that the learned Counsel for the appellant was right in submitting that but for the statement of the deceased there was no other pointed evidence from which it could be inferred that there was any abetment so as to bring the acts of the appellants within Section 306 IPC, under which the appellants were convicted. The Court held that the dying declaration, per se, could not involve the appellants in offence punishable u/s 306 IPC, because it provides for abetment of suicide. It was observed that whoever abets the commission of suicide, and if any person commits suicide due to that reason, he shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Referring to Section 107 of the IPC, the Court observed that abetment would mean that a

person abets the doing of a thing who firstly instigates any person to do a 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. The Court held that neither of the ingredients or abetment were attracted on the statement of the deceased and, therefore, the conviction of the appellants u/s 306 of the IPC merely on the allegation of harassment to the deceased was not sustainable. Since the conviction in that case was only u/s 306 of the IPC, the Apex Court held that since the appellants were not charged u/s 498A though the offence was committed after commencement of that section, it would be prejudicial to the appellants accused to substitute the conviction u/s 498A and ultimately recorded acquittal. However, we may hasten to add that in the case on our hand, the conviction of the appellants is both u/s 306 as well as 498A of the IPC and they were charged for both the offences.

15. If we examine the case on our hand in light of the said decision of the Apex Court, we find that exh. 45 does not refer to the ingredients envisaged u/s 107 of the IPC. It is also to be noted with emphasis that since the marriage span was for a period of more than 7 years, presumption u/s 113A and 113B would not be attracted. The other evidence led by the prosecution also does not indicate presence of any of the ingredients of Section 107 of the IPC and, therefore, in our view, the conviction of the appellants by the trial Court for offence punishable u/s 306 of the IPC cannot be sustained.

16. We may further add that active participation of any of the appellants is not proved by the prosecution as it is clear that appellant No. 1 was not present at the time of incident. The door to the house was bolted from inside as can be seen from the evidence of the first informant and other witnesses as well as the panchnama. Even as per exh. 45, the suicide note, appellant No. 1 was allegedly taken away by other accused persons. So far as the other accused persons are concerned, their presence is not alleged and they are all staying at distant places from the place of incident. These are the factors which would add to the reasons for holding that conviction u/s 306 of the IPC could not have been recorded by the trial Court.

17. Now so far as the conviction u/s 498A of the IPC is concerned, it is clear from exh. 45 that the appellants, other than appellant No. 1, were responsible for the harassment meted out to the deceased. Deceased Lila has not made any allegation against appellant No. 1 in the suicide note. However, the evidence of the first informant, his son and his wife, besides the oral evidence of neighbours, would go to show that for last quite sometime the deceased was being subjected to harassment and cruelty, we find ring of truth in the evidence of these witnesses for the reason that a lady pregnant of 4 months and mother of a minor son aged about 7 years would not commit suicide unless there is extreme harassment and torture to her and for that purpose she herself points at the

appellants other than appellant No. 1. Considering the evidence as a whole, we are of the view that the trial Court was justified in holding that the charge for an offence punishable u/s 498A was duly proved by the evidence led by the prosecution in form of suicide note exh. 45 and other oral evidence and the same, therefore, deserves to be upheld.

18. What emerges from the above discussion is that the married life of appellant No. 1 with the deceased was of a period of more than 7 years and presumptive clause is not attracted and, therefore, in peculiar facts and circumstances of the case, without laying down any absolute proposition of law, we hold that the appellants' conviction u/s 306 of the IPC cannot be sustained.

19. In the result, for the foregoing reasons, the appeal would stand partly allowed. The conviction of the appellants for offence punishable u/s 306 of the IPC is set aside and the conviction of the appellants for offence punishable u/s 498A of the IPC is confirmed with sentence.

We understand that except appellant No. 1, rest of the appellants are on bail. They shall, therefore, surrender to jail on or before 7th November, 2008. If they fail to surrender by that date, it would be open for the Sessions Court, Bharuch to pass appropriate orders for securing their surrender to custody.