

**Patel Babubhai Manohardas & Ors.**  
v.  
**State of Gujarat**

(Criminal Appeal No. 1388 of 2014)

05 March 2025

**[Abhay S. Oka and Ujjal Bhuyan,\* JJ.]**

**Issue for Consideration**

The four appellants were convicted by the Trial Court u/s.306 and 114 of Penal Code, 1860 and sentenced to rigorous imprisonment for 5 years. The High Court affirmed the conviction and sentence. Whether the High Court was justified in affirming the conviction and sentence.

**Headnotes<sup>†</sup>**

**Penal Code, 1860 – ss.306 and 114 – Victim-deceased died by consuming poison – It was alleged that one cleaning worker in his office had trapped him in a love scandal – A note was found from the pocket of deceased stating that the said cleaning worker and her family members were blackmailing victim after taking various photographs and videos of him in compromising position – FIR was lodged – Trial Court convicted the four appellants u/s.306 and 114 of Penal Code, 1860 – The conviction was confirmed by the High Court – Correctness:**

**Held:** On perusal of evidence of record, it would reveal that the incident had occurred on 25.04.2009 and the complaint was filed 14.05.2009 – There is an unexplained delay of 20 days in lodging the FIR – There are significant inconsistencies in the evidence of the prosecution witnesses regarding the occurrence – PW-2 stated in her substantive evidence that when she reached her house she saw dead body of her husband (deceased) – However, in her cross-examination, she stated that when she reached home relatives had already taken her husband to hospital – When the panchnama was drawn on 25.04.2009, no note was found

\* Author

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

on the body of the deceased – PW-2 stated that from the time of death till the lodging of complaint, the suicide note was with PW-7 – This cast serious aspersions about the credibility of the suicide note – PW-6 stated that his niece told him about his brother-deceased, then he went to the house of deceased and at that time PW-7 was also present there – On the other hand, PW-7 stated that his brother PW-6 came to his house and told him about deceased and thereafter he rushed to deceased's house – Such inconsistencies clearly impeach the credibility of the prosecution witnesses – Nothing is placed on record to show recovery of any jewellery (ornaments) by the police from the accused persons – No signed cheques of the deceased or cheque book or passbook of the deceased were recovered and exhibited in court – Therefore, the very sub-stratum of the prosecution case that the accused persons were making illegal gain by blackmailing the deceased falls flat – Further, there is no recovery of any trace of the poison consumed by the deceased at the place of occurrence – Also, the prosecution did not examine the Deputy Chief Handwriting Expert as an expert witness – The records also do not indicate that the accused had admitted genuineness of the report of the handwriting expert – Finally, even if the suicide note is taken as correct and genuine, there is no act of incitement on the part of the appellants proximate to the date on which the deceased committed suicide – No act is attributed to the appellants proximate to the time of suicide which was of such a nature that the deceased was left with no alternative but to commit suicide – In such circumstances, it cannot be said that any offence of abetment to commit suicide is made out against the appellants – Consequently, the impugned judgment and order of the High Court and of the trial court are hereby set aside. [Paras 31, 33, 34, 35, 36, 38, 41, 45, 46]

**Evidence – Handwriting Expert – Opinion of handwriting expert – Discussed.** [Paras 42-44]

**Case Law Cited**

*Ramesh Kumar v. State of Chhattisgarh [2001] Supp. 4 SCR 247 : (2001) 9 SCC 618; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [2009] 13 SCR 230 : (2009) 16 SCC 605; Amalendu Pal alias Jhantu v. State of West Bengal [2009] 15*

## Digital Supreme Court Reports

**SCR 836 : (2010) 1 SCC 707; Ude Singh v. State of Haryana [2019] 9 SCR 703 : (2019) 17 SCC 301; Rajesh v. State of Haryana (2020) 15 SCC 359; Amudha v. State, 2024 INSC 244; Kamaruddin Dastagir Sanadi v. State of Karnataka (2024) SCC Online SC 3541; Prakash v. State of Maharashtra, 2024 INSC 1020; Sanju @ Sanjay Singh Sengar v. State of M.P. [2002] 3 SCR 668 : (2002) 5 SCC 371; Kumar @ Shiva Kumar v. State of Karnataka [2024] 3 SCR 329 : 2024 INSC 156; Shashi Kumar Banerjee v. Subodh Kumar Banerjee (since deceased) AIR 1964 SC 529; Murari Lal v. State of M.P. [1980] 2 SCR 249 : (1980) 1 SCC 704; Keshav Dutt v. State of Haryana [2010] 10 SCR 151 : (2010) 9 SCC 286 – referred to.**

### List of Acts

Penal Code, 1860; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

### List of Keywords

Abetment to suicide; Abets; Instigation; Section 306 IPC; Positive action proximate to the time of occurrence; Mens rea; Inconsistent testimony; Veracity of the evidence; Credibility of witness; Suicide Note; Panchnama; Delay in lodging FIR; Expert Evidence; Handwriting Expert; Consumption of poison; Handwriting is opinion evidence.

### Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1388 of 2014

From the Judgment and Order dated 17.12.2013 of the High Court of Gujarat at Ahmedabad in CRLA No. 626 of 2011

### Appearances for Parties

*Advs. for the Appellants:*

Rajiv Kumar, Sanjeev Gupta, Bhanu Kapoor, J.K. Mishra, Rameshwar Prasad Goyal.

*Advs. for the Respondent:*

Ms. Deepanwita Priyanka, Ms. Swati Ghildiyal, Ms. Devyani Bhatt.

**Patel Babubhai Manohardas & Ors. v. State of Gujarat****Judgment / Order of the Supreme Court****Judgment****Ujjal Bhuyan, J.**

This appeal by special leave is directed against the judgment and order dated 17.12.2013 passed by the High Court of Gujarat at Ahmedabad (briefly 'the High Court' hereinafter) in Criminal Appeal No. 626 of 2011.

2. It may be mentioned that the four appellants are accused Nos. 1 to 4. They were convicted by the Court of Additional Sessions Judge, Mehsana *vide* the judgment and order dated 12.05.2011 in Special Atrocity Case No. 53/2009 under Sections 306 and 114 of Indian Penal Code, 1860 ('IPC' for short) and sentenced to rigorous imprisonment (RI) for 5 years and to pay a fine of Rs. 10,000.00 each with a default stipulation.
3. Aggrieved by the aforesaid conviction and sentence, appellants preferred Criminal Appeal No. 626 of 2011 before the High Court. State of Gujarat also filed Criminal Appeal No. 796 of 2011 for enhancement of sentence. By the common judgment and order dated 17.12.2013, the High Court dismissed the appeal of the appellants and affirmed the conviction and sentence imposed on the appellants by the learned Additional Sessions Judge, Mehsana ('trial court' for short). The appeal filed by the State was also dismissed.
4. It is against the aforesaid judgment and order dated 17.12.2013 passed by the High Court that the appellants preferred the related SLP (Crl.) No. 2809/2014. However, State did not challenge before this Court dismissal of its appeal by the High Court.
5. This Court by order dated 07.04.2014 had issued notice both on the special leave petition as well as on the prayer for bail. By order dated 04.07.2014, leave was granted. Thereafter, *vide* the order dated 17.10.2014, this Court granted bail to appellant No. 4. *Vide* the order dated 11.05.2015, appellant No. 1 was also granted bail. Thereafter, by the order dated 14.09.2015, appellant Nos. 2 and 3 were granted bail.
6. Prosecution case in brief is that one Jaybalaben lodged first information before the Mehsana Taluka police station on 14.05.2009

**Digital Supreme Court Reports**

stating that at 08:00 AM on 25.04.2009, she and her daughter Priyanka had gone to the Amipura water park dispensary as she was working there. At around 01:00 PM, one Jayantibhai Kalidas, a neighbour, came to her dispensary and told her that her mother-in-law was ill. On hearing this, she and her daughter came back home immediately in a rickshaw. When she reached her house, she saw many people had gathered there. She went inside the house and saw her husband Dashrathbhai Karsanbhai lying on a cot with his younger and elder brothers standing nearby. Though she tried to revive him, he did not respond; he had already died. As she started weeping, the ladies who were present there told her that her husband had consumed poison. Foul smell of poison was coming from his mouth. First informant stated that her husband was taken to the village dispensary where he was declared dead. Thereafter police came. After completion of necessary paper works, body of her husband was taken to Mehsana Civil Hospital for postmortem examination on completion of which the body was handed over to the family.

- 6.1. Jaybalaben continued with her narration. She stated that about a year ago, a case of misappropriation was registered against her husband Dashrathbhai Karsanbhai in his office. She and her elder brother-in-law Jayantibhai had asked her husband as to why he needed so much of money to which the reply of her husband was that one cleaning worker in his office by the name Geetaben had trapped him in a love scandal and thereafter started blackmailing him for money. It was for this reason that he had to withdraw money from the office to give her.
- 6.2. When her elder brother-in-law Jayantibhai called Geetaben, her mother Jasiben, her husband Dahyabhai and relative Babubhai Patel to return the money, they initially agreed to do so but did not return. They also took away ornaments (jewellery).
- 6.3. Jaybalaben also stated that at the time of death of her husband, they found one note of two pages from the pocket of her husband's trouser which was shown to her by Jayantibhai, her elder brother-in-law. She stated that from that note, it was apparent that Geetaben and her family members were blackmailing her husband after taking various photographs and videos of him with her in compromising position. She

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

stated that her husband had also stolen ornaments (jewellery) of her daughter and gave those to Geetaben and her family members. It was for this reason that her husband Dashrathbhai Karsanbhai had consumed poison.

7. The aforesaid complaint was registered as I.C.R. No. 107/2009 by the Mehsana Taluka police station under Sections 306/114 of IPC read with Section 3(2)(5) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Prevention of Atrocities Act' hereinafter). The investigating officer on conclusion of investigation filed chargesheet against the appellants before the Court of Chief Judicial Magistrate, Mehsana. As the case was triable by the Court of Sessions, it was committed to the Court of Additional Sessions Judge, Mehsana (trial court) where the case was numbered as Special Atrocities Case No. 53/2009. Prosecution examined as many as 14 witnesses and exhibited a number of documents to prove its case. On completion of prosecution evidence, statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Appellants denied the prosecution case and alleged false implication.
8. On consideration of the oral as well as documentary evidence and after hearing the parties, trial court *vide* the judgment and order dated 12.05.2011 convicted the appellants under Sections 306/114 of IPC but acquitted them of the charge under Section 3(2)(5) of the Prevention of Atrocities Act. Upon such conviction, the trial court sentenced the appellants to undergo RI for 5 years and to pay fine of Rs. 10,000.00 each with a default stipulation for the offence punishable under Sections 306/114 IPC.
9. Appellants assailed the aforesaid conviction and sentence of the trial court before the High Court in Criminal Appeal No. 626 of 2011. As pointed out above, State also filed Criminal Appeal No. 796/2011 for enhancement of sentence.
10. High Court *vide* the judgment and order dated 17.12.2013 upheld the conviction and sentence of the appellants and dismissed their appeal. High Court also did not find any good ground to enhance the sentence. Consequently, the criminal appeal filed by the State was dismissed.
11. Learned counsel for the appellants submits that both the trial court and the High Court failed to appreciate that the prosecution case

**Digital Supreme Court Reports**

was not supported by any material evidence, such as, video cassette and objectionable photographs of the deceased with the accused persons etc. Therefore, the story of blackmailing by the accused persons compelling the deceased to commit suicide is not at all believable.

- 11.1. From the evidence tendered by the prosecution witnesses, no intention on the part of the accused persons to aid or instigate or abet the deceased to commit suicide is discernible. Appellants were neither present at the time and place of recovery of the dead body nor at any proximate point of time. Therefore, no case for abetment to commit suicide can be said to have been made out against the appellants.
- 11.2. Learned counsel for the appellants further submits that the so-called suicide note was produced before the police 20 days after the death of the deceased. As such, no reliance can be placed on such suicide note.
- 11.3. Learned counsel further submits that both the courts below failed to appreciate that PW-7 Jayantibhai Karshanbhai Parmar, elder brother of the deceased, did not support the case of the prosecution. As such the charge under Section 306 IPC cannot be said to have been proved by the prosecution against the appellants beyond all reasonable doubt.
- 11.4. He also points out that according to the prosecution case, the deceased had given money and ornaments to the appellants on their blackmailing him. But there was neither recovery of any money nor ornaments from the accused persons (appellants). Learned counsel for the appellants submits that there could be various other reasons which compelled the deceased to take the extreme step, such as, disciplinary proceeding initiated in his office against him for misappropriation of money leading to his suspension but certainly no case of abetment to commit suicide can be said to have been made out against the appellants.
- 11.5. That being the position, learned counsel contends that appellants have been wrongly convicted under Sections 306/114 IPC and, therefore, are entitled to a clear acquittal. Appeal should accordingly be allowed.

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

12. *Per contra*, learned counsel for the respondent submits that death of Dashrathbhai Karsanbhai Parmar had taken place due to consumption of poison. This has been proved by the postmortem report. He submits that the suicide note (Ex. 33) was written in the own handwriting of the deceased and this has been proved as per the opinion of the handwriting expert. From the suicide note, it is apparent that appellants had extracted money from the deceased by blackmailing him with compromising photographs of the deceased with appellant No. 3. As the deceased became unable to withstand the same, he took the drastic step.
  - 12.1. Learned counsel for the respondent submits that on a conjoint reading of all the oral and documentary evidence, it is evident that prosecution had proved the charge against the appellants beyond all reasonable doubt. Therefore, the trial court rightly convicted the appellants under the aforesaid provisions of law which conviction has been affirmed by the High Court. He, therefore, submits that there is no merit in this appeal and consequently the appeal should be dismissed.
13. Submissions made by learned counsel for the parties have received the due consideration of the Court.
14. Before we proceed to advert to the evidence of the material prosecution witnesses and to analyse the same, it would be apposite to refer to the legal provisions and the judicial precedents relevant for adjudication of the present criminal appeal.
15. Attempt to commit suicide is an offence in India. Section 309 IPC says that whoever attempts to commit suicide and does any act towards such act, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. However, once suicide is carried out, the offence is complete. Considering the nature of the offence, obviously such a person would be beyond the reach of the law. Therefore, question of penalising him would not arise but whoever abets the commission of such suicide would be penalised under Section 306 IPC. Punishment prescribed under Section 306 IPC is imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. What Section 306 IPC says is that if any person commits suicide, then whoever abets the commission of such suicide shall be punished as above.

**Digital Supreme Court Reports**

16. Therefore, the crucial word in Section 306 IPC is ‘abets’. ‘Abetment’ is defined in Section 107 of IPC. As per Section 107 IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. There are two explanations to Section 107. As per Explanation 1, even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise bound to disclose voluntarily causes or procures or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. Explanation 2 clarifies that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.
17. Section 114 IPC is an explanation or clarification of Section 107 IPC. What Section 114 IPC says is that whenever any person is absent but was present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such an act or offence and would be liable to be punished as an abettor.
18. In *Ramesh Kumar v. State of Chhattisgarh*,<sup>1</sup> this Court held that to ‘instigate’ means to goad, urge, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of ‘instigation’, it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then ‘instigation’ may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be ‘instigation’.
19. Elaborating further, this Court in *Chitresh Kumar Chopra versus State (Govt. of NCT of Delhi)*<sup>2</sup> observed that to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘gloating’ or ‘urging forward’. This Court summed up the constituents of ‘abetment’ as under:

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<sup>1</sup> (2001) 9 SCC 618

<sup>2</sup> (2009) 16 SCC 605

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
  - (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.
20. *Amalendu Pal alias Jhantu versus State of West Bengal*<sup>3</sup> is a case where this Court held that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Similar view has been expressed by this Court in case of *Ude Singh versus State of Haryana*.<sup>4</sup>
21. After considering the provisions of Sections 306 and 107 of IPC, this Court in *Rajesh versus State of Haryana*<sup>5</sup> held that conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide.
22. Abetment to commit suicide involves a mental process of instigating a person or intentionally aiding a person in the doing of a thing. Without a positive proximate act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Besides, in order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence.
23. This Court in *Amudha versus State*<sup>6</sup> held that there has to be an act of incitement on the part of the accused proximate to the date

3 (2010) 1 SCC 707

4 (2019) 17 SCC 301

5 (2020) 15 SCC 359

6 2024 INSC 244

## Digital Supreme Court Reports

on which the deceased committed suicide. The act attributed should not only be proximate to the time of suicide but should also be of such a nature that the deceased was left with no alternative but to take the drastic step of committing suicide.

24. Again, in the case of *Kamaruddin Dastagir Sanadi versus State of Karnataka*,<sup>7</sup> this Court observed that discord and differences in domestic life are quite common in society. Commission of suicide largely depends upon the mental state of the victim. Until and unless some guilty intention on the part of the accused is established, it is ordinarily not possible to convict the accused for an offence under Section 306 IPC.
25. *Prakash versus State of Maharashtra*<sup>8</sup> is a case where this Court after analysing various decisions on the point summed up the legal position in the following manner:
  14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear *mens rea* to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.
- 25.1. In the aforesaid judgment, this Court referred to its earlier decision in *Sanju @ Sanjay Singh Sengar versus State of M.P.*<sup>9</sup> and held that in a given case, even a time gap of 48 hours between using of abusive language by the accused and the commission of suicide would not amount to a proximate act.
26. Having surveyed the relevant legal provisions and the case laws on the subject, let us now deal with the material prosecution witnesses.
27. PW-2 is Jayabalaben Dashrathbhai Parmar, the informant. In her evidence in chief, she stated that the incident had occurred on the

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7 (2024) SCC Online SC 3541

8 2024 INSC 1020

9 (2002) 5 SCC 371

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

25<sup>th</sup> of the fourth month (April). She deposed that she worked as a clean worker in the water park, having studied up to 10<sup>th</sup> standard. Her husband Dashrathbhai Karsanbhai Parmar was serving in the postal department. Her husband's last posting was at Linch. They had 5 children, 3 girls and 2 boys. She stated that she came to know later that there was a misappropriation case against her husband in his office.

- 27.1. Geetaben of Linch (appellant/accused No. 3) befriended and became close to them. That way she started coming home. PW-2 alleged that by performing some 'black art' and giving her husband some liquid substance, she made him her own. Geetaben left her husband after taking away his money.
- 27.2. On 25.04.2009, PW-2 had gone to the water park in connection with her service. During noon, one Jayantibhai Kalabhai Parmar came to her office and told her that her mother-in-law was ill. On hearing this, she came back home. In front of her residence, she saw a huge crowd. As she entered her house, she saw the dead body of her husband. She tried to wake him up by shaking him but there was no response.
- 27.3. PW-2 stated that she had some ornaments but those had been taken away by the accused persons. She stated that she did not notice anything at the time of the death of her husband but later on she found one slip (note). She read that note wherefrom she could gather that lot many things were written in that letter. In the note, it was written that the appellants had trapped him and after making video cassette, they used to blackmail him. Fed up with such harassment, he committed suicide by consuming poison.
- 27.4. She, therefore, lodged a complaint before the police on 14.05.2009 (Ex. 22/1).
- 27.5. PW-2 was cross-examined. She stated in her cross-examination that the incident had occurred on 25.04.2009. Police had taken her two statements on 14.05.2009 and 15.05.2009. In so far the misappropriation case of her husband is concerned, PW-2 stated that she and her husband had paid back Rs. 1,20,000.00 to the postal department, receipt of which was given. She also admitted that there was a case against her husband for which he was arrested by the police though released on

**Digital Supreme Court Reports**

bail subsequently. She however admitted that the chit (note) was found by her elder brother-in-law (PW-7) and not by her. Before she reached her home on 25.04.2004, relatives had taken her husband to the hospital.

- 27.6. Jayantibhai, the elder brother-in-law (PW-7), told PW-2 about the note on the next day and that is how she came to know that her husband had written the note. When panchnama was drawn on 25.04.2009, no note was found. From the time of death till the lodging of complaint, the note was with PW-7. PW-2 did not go to the police station to say about the note. She described the relationship between the accused as follows: Geetaben (appellant/accused No. 3) who used to work in the office of her husband; appellant/accused No. 4 is the mother of Geetaben; appellant/accused No. 2 is the husband of Geetaben; and appellant/accused No. 1 is a relative of the other accused persons. PW-2 stated that neither Geetaben nor the accused persons had ever come to her residence.
- 27.7. PW-2 stated that her husband was suspended from service about 2 years back. He was worried about the misappropriation case. PW-2 denied the suggestion that the note was not written by her husband and that the accused persons had not taken away money from him.
28. Amrutbhai Karshanbhai Parmar is PW-6. Deceased was his brother. On that fateful day, while he was having lunch at home, his niece came to him and told him that something had happened to her father. Then he went to the house of his brother Dashrathbhai and found him lying motionless. He believed that he had consumed poison. When he took his brother to the hospital, he was declared dead. At that time, his other brother Jayantibhai (PW-7) was also there. On searching the body of his brother, PW-6 stated that they found one note from his pocket. In that note, the deceased had mentioned 3-4 names further stating that they were blackmailing him; so he had committed suicide. It was in the own handwriting of Dashrathbhai. However, he stated that he did not know the persons whose name were mentioned in the note.
29. PW-7 is the elder brother of the deceased, Jayantibhai Karshanbhai Parmar. Narrating about the incident, he stated that while he was at home during noon, his brother Amrutbhai came and told him that

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

Dashrathbhai was lying unconscious. They rushed to Dashrathbhai's house and found him in an unconscious condition. They dialled 108 and also informed the police. They took Dashrathbhai to the hospital where he was declared dead. PW-7 stated that though he searched the body of his brother Dashrathbhai, he did not find anything. Contradicting the above statement, he stated that though one note was found, who found that note and what was written in it, he did not know. He stated that he did not know for what reason, his brother died.

- 29.1. This witness was declared hostile.
- 29.2. In his cross-examination, he stated that he had no idea that in his statement before the police he had stated that one note was found in his brother's pocket wherein it was written that he had an affair with Geetaben (appellant No. 3) and for that reason he had committed suicide. He denied making any statement before the police on 15.05.2009 that his brother Dashrathbhai had given the misappropriated money to Geetaben and that the accused persons were blackmailing his brother by showing him compromising photos and videos of him and Geetaben. He also denied making any statement before the police that his deceased brother had given ornaments meant for his daughter's marriage to the appellants.
30. PW-11 is Champaben Nathalal, women head constable. In her evidence, she stated that while she was on duty in the afternoon on 14.05.2009, the complaint came to be registered. In her cross-examination, she stated that as per Diary No. 17/09 dated 24.04.2009 (sic), she was on duty when inquest was carried out. She stated that no note was found at the time of the inquest and no such note was presented at the police station.
31. On a careful analysis of the evidence tendered by the above prosecution witnesses, it would reveal that though the incident had occurred on 25.04.2009, the complaint was lodged by PW-2 on 14.05.2009, thus there being a delay of 20 days. Though there is a GD entry on 25.04.2009, it appears that barring postmortem and inquest, no FIR was registered and no other investigation was carried out by the police. It was only after lodging of the complaint that police recorded the statement of PW-2 on 14.05.2009 and 15.05.2009 and of the other witnesses thereafter. Though delay in lodging of first

**Digital Supreme Court Reports**

information is not always fatal but considering the fact that in this case, the delay is of 20 days which has remained unexplained, it would have a material bearing on the prosecution case.

32. PW-11 who served as the head constable in the concerned police station, deposed that she was on duty in the afternoon of 14.05.2009 when the complaint came to be registered. In her cross-examination, she stated that she was also on duty when Diary Entry No. 17/09 dated 24.04.2009 was made. She was categorical in her statement that no suicide note was found at the time of the inquest; no such note was presented at the police station either.
33. There are significant inconsistencies in the evidence of the prosecution witnesses regarding the occurrence. PW-2 stated in her substantive evidence that on being informed about her mother-in-law's illness, she had come home from her office. On reaching home, she saw a huge crowd in front of her residence. As she entered her house, she saw the dead body of her husband. However, in her cross-examination, she stated that when she reached home on that fateful afternoon, the relatives had already taken her husband to the hospital. Such inconsistent testimony cast serious doubts about the veracity of the evidence of the said prosecution witness.
34. In so far the suicide note is concerned, PW-2 stated that PW-7 had told her on the next day about the same. It was only then that she came to know that her husband had written a suicide note. In fact, when the panchnama was drawn on 25.04.2009, no note was found on the body of the deceased. She stated that from the time of death till the lodging of complaint, the suicide note was with PW-7. This again cast serious aspersions about the credibility of the suicide note.
35. There is another significant inconsistency. PW-6 stated that while he was at home having lunch, his niece came and told him that something had happened to her father (Dashrathbhai Karsanbhai Parmar). So he went to the residence of his brother and found him lying motionless. At that time, PW-7 was also present. On the other hand, PW-7 stated that while he was at home, his brother PW-6 came and told him that brother Dashrathbhai was lying unconscious. It was thereafter that he rushed to Dashrathbhai's house. Such inconsistencies clearly impeach the credibility of the above two prosecution witnesses.

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

36. That apart, there is nothing on record to show recovery of any jewellery (ornaments) by the police from the accused persons. No signed cheques of the deceased or cheque book or passbook of the deceased were recovered and exhibited in court. In such circumstances, the very sub-stratum of the prosecution case that the accused persons were making illegal gain by blackmailing the deceased falls flat.
37. Before we move on to the alleged suicide note, it would be appropriate to advert to the postmortem report. As per the said report, cause of death was due to consumption of *Dichlorvos Organophosphorus Non-thio* poison. The doctor who carried out the postmortem examination, Dr. Prakash Laxmandas, deposed as PW-1. He stated that in the course of postmortem examination, 400 cc of coffee coloured foul smelling liquid was found in the small intestine and as per postmortem note, the same was *Dichlorvos Organophosphorus Non-thio* poison. He stated that if anybody drinks such poisonous substance then this type of death can happen.
38. However, there is no recovery of any trace of the poison consumed by the deceased at the place of occurrence. No bottle/container of such poison was recovered from the residence of the deceased. Moreover, the prosecution could not place before the court any material as to wherefrom the deceased had procured the poison.
39. In *Kumar @ Shiva Kumar versus State of Karnataka*,<sup>10</sup> this Court opined that in a case of death due to consumption or administering of poison, be it homicidal or suicidal, recovery of the trace of such poison is crucial. This Court held thus:

**46.** .....As a general principle, it can be said that in a case of death by poisoning, be it homicidal or suicidal and which is based on circumstantial evidence, recovery of the trace of poison consumed by or administered to the deceased is of critical importance. It forms a part of the chain; rather it would complete the chain to prove homicide or suicide.

40. This takes us to the suicide note (Ex. 33). We have already noted the delayed and controversial circumstances under which the suicide

**Digital Supreme Court Reports**

note surfaced which makes it highly suspect. Nonetheless, since it was exhibited, let us deal with the same. Sum and substance of the suicide note allegedly written by Dashrathbhai Karsanbhai Parmar (the deceased) with the date given as 24.04.2009 is that appellant No. 3 had joined his office following the illness of the existing cleaner. She used to come to the office daily for cleaning purposes. Slowly they developed intimacy. It is alleged that appellant No. 3 had performed 'black art' on the deceased so much so that, he fell in love with her. Taking advantage of the situation, she took photographs and video of them in compromising position. All the accused persons were shameless persons. As they started blackmailing him, he initially paid Rs. 80,000.00 to them and thereafter started giving them ornaments. He also gave them his passbook and cheque books after signing on the cheques. Because of such blackmailing, he had to misappropriate money from his office for which he was suspended. It is stated that he was totally ruined and, therefore, he had committed suicide as he had no other alternative.

41. The suicide note was sent to the Forensic Science Laboratory (FSL) for examination. The Deputy Chief Handwriting Expert of FSL, Gandhinagar opined that the handwriting was of the deceased. However, the prosecution did not examine the Deputy Chief Handwriting Expert as an expert witness. The records also do not indicate that the accused had admitted genuineness of the report of the handwriting expert.
42. In *Shashi Kumar Banerjee versus Subodh Kumar Banerjee (since deceased)*,<sup>11</sup> this Court observed that expert's evidence as to handwriting is opinion evidence. It can rarely, if ever, take the place of substantive evidence. Before acting on such opinion evidence, it is necessary to see if it is corroborated either by clear direct evidence or by circumstantial evidence.
43. In the case of *Murari Lal versus State of M.P.*,<sup>12</sup> this Court opined that having due regard to the imperfect nature of the science of identification of hand-writing, the approach of the court should be one of caution. Reasons for the opinion must be carefully probed and examined. In an appropriate case, corroboration may be sought.

<sup>11</sup> AIR 1964 SC 529

<sup>12</sup> (1980) 1 SCC 704

**Patel Babubhai Manohardas & Ors. v. State of Gujarat**

Where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, uncorroborated testimony of a handwriting expert may be accepted.

44. This Court dealt with the effect of placing reliance on the opinion of handwriting expert without examining him in court in *Keshav Dutt versus State of Haryana*.<sup>13</sup> One of the questions which fell for consideration in that case was whether the opinion of a handwriting expert can be admitted in evidence without examination of the handwriting expert. In this connection, this Court took the view that when the trial court chose to rely on the report of the handwriting expert, it ought to have examined the handwriting expert in order to give an opportunity to the accused to cross-examine the said expert. In that case, it was found that there was nothing on record to show that the accused persons had admitted to the report of the handwriting expert.
45. Finally, even if we take the suicide note as correct and genuine, we do not find any act of incitement on the part of the appellants proximate to the date on which the deceased committed suicide. No act is attributed to the appellants proximate to the time of suicide which was of such a nature that the deceased was left with no alternative but to commit suicide. In such circumstances, it cannot be said that any offence of abetment to commit suicide is made out against the appellants.
46. Accordingly and in the light of the above, we allow this appeal. Consequently, the impugned judgment and order of the High Court dated 17.12.2013 and of the trial court dated 12.05.2011 are hereby set aside. Since the appellants are already on bail, their bail bonds stand discharged.

*Result of the case:* Appeal allowed.

<sup>13</sup>Headnotes prepared by: Ankit Gyan