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BHANUBEN AND ANR.

v.

STATE OF GUJARAT

(Criminal Appeal No. 1209 of 2015)

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SEPTEMBER 14, 2015

[T. S. THAKUR AND V. GOPALA GOWDA, JJ.]

Penal Code, 1860: s.498A, 306 – Dowry death – Allegation that deceased committed suicide by taking poison as she was harassed for bringing dowry – Conviction of husband and mother-in-law and sister-in-law by courts below – Husband undergone the sentences passed against him – Instant appeal by mother-in-law and sister-in-law – Held: Evidence of the prosecution witnesses and the circumstantial evidence makes it amply clear that deceased was subjected to cruelty at the hands of her husband and her in-laws which had caused her grave mental and physical injury – The same had made her run away from matrimonial home several times – Ingredients to constitute offence u/s.498A fully satisfied against appellants – However, it cannot be said that the cruelty meted on the deceased led her to commit suicide or that accused had abetted in the commission of the same – Dying declaration was to the effect that she took poison by mistake which was corroborated by the doctor who had examined her and declared her stable and conscious to make statement – Thus prosecution failed to prove beyond reasonable doubt that accused had abetted the deceased in commission of suicide – Conviction u/s.306 set aside – Keeping in view the age of the appellants i.e. mother-in-law of the deceased who is said to be around 60 years of age and sister-in-law of the deceased who is more than 35 years of age and having a child to take care of, the sentence is limited to the period of imprisonment already undergone by them.

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Partly allowing the appeal, the Court

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HELD: It is an undisputed fact that the deceased was frequently taking refuge at Kanta Stri Vikas Gruh, Rajkot, Mahila Vikas Gruh and Gondal Bala Ashram and that her paternal relatives had pacified her many a times and she was sent back to her in laws' home after compromise. The same has been proved by the deposition of PW-6 paternal uncle of the deceased and PW-7-the wife of PW-6 and PW-9-the brother of the deceased. The same has also been further corroborated by PW-19 who is a social worker at Amreli Mahila Vikas Gruh. It is also an undisputed fact that the deceased had filed a complaint against the accused for maintenance, which was not paid to her by her husband. She had also filed an FIR against the accused under Sections 498A, 506(2) 114 of I.P.C and Sections 3 and 7 of the Dowry Prohibition Act, 1961. On several occasions after the compromise, the deceased was again thrown out of her matrimonial home. These witnesses have also stated that the deceased was regularly taunted and mentally and physically harassed by the accused and she had complained about the same to them. It was also deposed before the trial court by several other independent witnesses who were the neighbours of the accused and live in the same vicinity that they had witnessed heated exchanges and quarrel between the accused and the deceased which has been corroborated by PW-8. It was also noticed that the deceased had spent several days sleeping at odd places like, empty buses, etc. as she had nowhere else to go. Further, PW-12 in his testimony had stated that the deceased was loitering outside his street and had asked for his help, thereby claiming that her husband and in-laws were trying to kill her and that is why she ran away from their home. She also had burn

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A marks branded on her hands. Therefore, he had helped her and paid her an amount of Rs.200/- for the bus fare. The mother-in-law ignored the pleas of the deceased by calling her act as “epileptic fits” when the deceased had come running out of her house and was calling out to her for help on the day of the unfortunate incidence. The reason that the deceased kept coming back to her matrimonial home by way of compromise in spite of all the cruelty and torture meted against her is because of her minor daughter who was living with her husband. Thus, the ingredients to constitute the offence under the provision of Section 498A of I.P.C. have been fully satisfied against the appellants. [Paras 17, 19, 20] [1133-F-H; 1134-A-H; 1135-A-C, F-H]

D *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*
(2012) 7 SCC 288; 2012 (7) SCR 607 – relied on.

2. The point whether the accused had abetted in the commission of suicide of the deceased as provided under Section 306 of I.P.C. cannot be proved with conclusive evidence in the light of the fact that the deceased in her dying declaration had clearly stated that she had consumed the poisonous tablets by mistake. The same was further corroborated by the doctor who had examined her and had declared her as stable and conscious enough to give a reasonable statement. Further, the accused were present inside the house at the time the deceased consumed the poisonous tablet and they had taken her to the hospital as soon as they realized that she was in a critical condition. Thus, even though the cruelty aspect meted on the deceased was proved beyond all reasonable doubt, it cannot be said that the same had led her to commit suicide or that the accused had abetted in the commission of the same, as is clear from the facts and circumstances of the present

case. Appellant no.1 even though had behaved stoically in the beginning by calling the act of the deceased as “epileptic fit”, but as soon as she realized the gravity of the situation she called her son and they took her to the hospital for examination and treatment. This act of the accused clearly showed that they did not abet the deceased in the commission of the suicide, if at all it was a suicide. [Paras 22, 23] [1136-H; 1137-A-B, F-H; 1138-A]

Bhola Turha v. State of Bihar (1998) 9 SCC 15 –
relied on.

3. From the facts and circumstances of the present case and upon the examination of the body of deceased, it is clear that her death was a result of an accident and she had mistakenly consumed the poisonous tablet as the same was kept with other medicines. Had the deceased wanted to implicate the accused, she would have revealed their names in the final moments before her death, as she had nothing to fear for and her antecedent showed that she had previously filed a complaint against the accused when they harassed her. If the accused had any hand in her death, the same would have been revealed in the dying declaration of the deceased. Thus, the prosecution failed to prove beyond all reasonable doubt that the accused had abetted the deceased in the commission of suicide as provided under the provision of Section 306, I.P.C. Merely because an accused was held liable to be punished under Section 498A IPC, it does not follow that on the same evidence, he must also and necessarily be held guilty of having abetted the commission of suicide by the women concerned under 306 IPC. Therefore, the conviction and sentence for offence punishable under Section 306 read with Section 114, IPC of the present appellants is contrary to the legal evidence on record

A particularly, the dying declaration of the deceased and the conduct of the accused who took the deceased to the hospital. [Paras 24 and 26] [1138-C-E, H; 1139-A-C]

B *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618: 2001 (4) Suppl. SCR 247 – relied on.

C 4. Keeping in view the age of the appellants i.e. the appellant No. 1-mother-in-law of the deceased who is said to be around 60 years of age and appellant No.2-sister-in-law of the deceased who is more than 35 years of age and having a child to take care of, the sentence is limited to the period of imprisonment already undergone by them. [Para 28] [1140-B]

D Case Law Reference

2012 (7) SCR 607	relied on.	Para 21
(1998) 9 SCC 15	relied on.	Para 22
2001 (4) Suppl. SCR 247	relied on.	Para 26

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1209 of 2015

F From the Judgment and Order dated 23.02.2015 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 101 of 2010

Santosh Krishnan, Nikhil Goel, Naveen Goel, Marsook Bafaki for the Appellants.

G Hemantika Wahi, Jesal Wahi, Puja Singh for the Respondent.

The Judgment of the Court was delivered by

H **V. GOPALA GOWDA, J.** 1. Leave granted.

2. This appeal is filed by the appellants against the impugned judgment and order dated 23.02.2015, passed in Criminal Appeal No. 101 of 2010, by the High Court of Judicature of Gujarat at Ahmedabad, wherein the High Court has dismissed the appeal of the appellants and upheld the order of conviction and sentence of the appellants under Sections 498A and 306 read with Section 114 of the Indian Penal Code, 1860 (in short "I.P.C.") passed by the Fast Track Court, Veraval, Camp Una, in Sessions Case No.9 of 2007 (hereinafter "the trial court") in its judgment and order dated 21.11.2009. The appellants have prayed to set aside the same and quash the criminal proceedings initiated against them by the respondent-State, urging various legal grounds.

3. The brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

The appellant nos. 1 and 2 are the mother-in-law and the sister-in-law of the deceased respectively. It is the case of the prosecution that the deceased was residing with her husband and in-laws in a joint family at Kodinar with a minor daughter. However, within 2 years of marriage, the deceased was allegedly tortured by her husband and her in-laws for not bringing dowry and not working properly. The deceased was also allegedly driven out of her matrimonial home and was forced to stay at Kanta Stri Vikas Gruh at Rajkot.

4. The deceased informed the complainant, who is her paternal uncle about the harassment and that her husband and in-laws were demanding an amount of Rs.20,000/- from her. The maternal uncle of the deceased persuaded her to compromise with her in-laws and sent her back to her matrimonial home. Thereafter, the deceased was kept well for a month but she was later allegedly beaten up and driven out of her matrimonial home. A case was registered against them

A before the Amreli Nari Surakhsha Gruh. After 2 months, the husband and the father-in-law of the deceased brought her back after making a settlement. After a month of her return to her matrimonial home, the deceased was again allegedly beaten up and thrown out of her home. The deceased then
B filed a complaint against her in-laws before the Babra Police Station and a maintenance application was filed before the Babra Court. The husband of the deceased brought her back home again after making a settlement before the Court but she was again allegedly beaten up by her in-laws against which
C she filed a case before the Amreli Mahila Vikas Gruh, where her maintenance was fixed at Rs. 1,000/- p.m. but the same was not paid by her husband.

D 5. The deceased then stayed at the Gondal Bala Ashram (orphanage) and from there she again went back to her in-laws place at Kodinar to meet her daughter whose custody was with her husband as part of a compromise between herself and the accused. It is further the case of the prosecution that
E on 12.11.2006 at about 11.30 hours when the complainant was on his way to work he received an information that the deceased had consumed poison and later came to know through his daughter that the deceased had passed away.

F 6. The complainant then filed a complaint being I.C.R. No. 172 of 2006 before the Kodinar Police Station against the appellants and the husband of the deceased. Thereafter, further investigation was carried out, the panchanama of the scene was drawn, the statements of the witnesses were recorded and the accused were arrested.

G 7. The learned trial court after recording the evidence of prosecution witnesses and on perusal of the dying declaration of the deceased and on consideration of the same, convicted and sentenced the present appellants and the husband of the
H deceased for the offences punishable under Sections 498A

and 306 read with Section 114 of I.P.C. The accused were to undergo 3 years of rigorous imprisonment with a fine of Rs.5000/- and in default, further simple imprisonment of six months for the offences punishable under Sections 498A and 114 of the I.P.C. For offences punishable under Sections 306 and 114 of the I.P.C. the accused were ordered to undergo 10 years rigorous imprisonment with a fine of Rs.12,000/-each and in default, further simple imprisonment of one year. The accused were acquitted for the offences punishable under Section 304B read with Section 114 of the I.P.C. and Section 4 of the Dowry Prohibition Act, 1961.

8. Being aggrieved by the same the accused filed an appeal before the High Court of Gujarat which dismissed the same holding that it has been well established that the accused have instigated the deceased and thereby they abetted the deceased in committing suicide. The High Court further held that the accused and his family members caused mental and physical cruelty and therefore, the deceased was put in a critical condition and consumed poison and ended her life. It further held that on perusal of the findings recorded by the trial court it was impossible that the deceased could have consumed poison by mistake and therefore, the learned trial court has rightly convicted the accused as they are guilty of the above mentioned offences. The High Court has thus upheld the order of conviction and sentence passed by the trial court against all the accused persons. It is stated that the husband of the deceased has already undergone the period of sentences passed against him and has been released from jail. The present appeal has been filed by the appellants-the mother-in-law and the sister-in-law of the deceased praying to set aside their conviction and sentence and for their enlargement on bail.

9. It has been contended by the learned counsel on behalf of the appellants that the guilt or even the involvement of the

A appellants in the commission of the offence has not been rightly pointed out by the courts below as there are no independent evidence/witnesses against them. Thus, the case against the appellants has not been proved beyond reasonable doubt.

B 10. It has been further contended by him that the trial court did not find any incriminating material evidence against the accused so as to punish them under the aforementioned offences. In the present matter, the only evidence adduced before the courts below was the deposition of the relatives of
C the deceased and no independent witnesses were examined. He has further submitted that as per the provisions under Section 113(A) of the Indian Evidence Act, 1872, the abetment on the part of the accused has not been proved by the prosecution.

D 11. He has further contended that the courts below have not considered the dying declaration of the deceased and the deposition made by the doctor who had examined her that were recorded by the Executive Magistrate do not mention
E any allegation against the accused.

F 12. On the other hand, it has been contended by Ms. Hemantika Wahi, the learned counsel on behalf of the respondent that the trial court and the High Court after appreciating the evidence on record and the submissions made on behalf of the parties have rightly convicted and sentenced the accused for the afore- mentioned offences.

G 13. She has submitted that the ingredients under Sections 498A, 306 and 304B of I.P.C. are established beyond all reasonable doubt against the accused. She has further submitted that from the evidence of the witnesses, it has been clearly established that the appellants were mentally and physically harassing the deceased and even had driven her
H out of her matrimonial house several times.

14. She has further submitted that the presumption as to the abetment of suicide as per Section 113A of the Indian Evidence Act, 1872, has been clearly proved and the appellants are responsible for abetting her in the commission of suicide which is the concurrent finding on fact and the appellants have not made out a case for interference of this Court.

15. On the basis of the rival legal contentions urged on behalf of the parties and the evidence on record, the following questions would arise for our consideration:

- 1) Whether, the Courts below have rightly convicted and sentenced the accused for the offences punishable under Sections 498A and 306 read with Section 114 of I.P.C.?
- 2) What order?

16. Before arriving at an irrefutable conclusion, we have to first determine as to whether the deceased was tortured and meted with cruelty by the accused or not? To find out the same, we have perused the evidence placed on record by the prosecution viz., the deposition of witnesses and the dying declaration of the deceased.

17. It is an undisputed fact that the deceased was frequently taking refuge at Kanta Stri Vikas Gruh, Rajkot, Mahila Vikas Gruh and Gondal Bala Ashram. It is also an undisputed fact that her paternal relatives had pacified her many a times and she was sent back to her in laws' home after compromise. The same has been proved by the deposition of PW-6 paternal uncle of the deceased at Exh.69 before the trial court and PW-7-the wife of PW-6 and PW-9-the brother of the deceased. The same has also been further corroborated by PW-19 who is a social worker at Amreli Mahila Vikas Gruh at Exh.135. It is also an undisputed fact that the deceased had filed a complaint

A against the accused for maintenance, which was not paid to
her by her husband. She had also filed an FIR against the
accused on 14.02.2006 under Sections 498A, 506(2) 114 of
I.P.C and Sections 3 and 7 of the Dowry Prohibition Act, 1961.
On several occasions after the compromise, the deceased
B was again thrown out of her matrimonial home. The
abovementioned witnesses have also stated that the deceased
was regularly taunted and mentally and physically harassed
by the accused and she had complained about the same to
the above mentioned witnesses.

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18. It has also been deposed before the trial court by
several other independent witnesses who are the neighbours
of the accused and live in the same vicinity that they had
witnessed heated exchanges and quarrel between the accused
D and the deceased which has been corroborated by Ravibhai
Dodia (PW-8) in his testimony at Exh.80 before the trial court.
Further, another independent witness, Smt. Savitaben (PW-
10), has also deposed before the trial court at Exh.84 that the
deceased had sat on "Opla" of her house for 2 consecutive
E days as the accused had locked up their house and gone
somewhere and came back only when they received a call
from their neighbours about the deceased sitting there. It has
also been noticed that the deceased had spent several days
F sleeping at odd places like, empty buses, etc. as she had
nowhere else to go.

19. Further, the deposition of the witness Hirakumar
Kanabhai Gohil (PW-12) in his testimony at Exh.95 had stated
before the trial court that the deceased was loitering outside
G his street and had asked for his help, thereby claiming that her
husband and in-laws were trying to kill her and that is why
she had run away from their home. She also had burn marks
branded on her hands. Therefore, he had helped her and paid
her an amount of Rs.200/- for the bus fare. We have also taken
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note of the fact that the mother-in-law ignored the pleas of the deceased by calling her act as "epileptic fits" when the deceased had come running out of her house and was calling out to her for help on the day of the unfortunate incidence. A

20. There is no other material evidence or fact brought before this Court to show that the deposition of the above mentioned witness is unreliable and this Court has no reason to believe the same to annul the finding of conviction on the charge against the appellants. Therefore, in the light of the above mentioned depositions made and based on the facts and circumstances of the case, it has been aptly held by the courts below that the prosecution has established by adducing cogent and convincing evidence that the deceased had been tortured by her in-laws and her husband. The reason that the deceased kept coming back to her matrimonial home by way of compromise in spite of all the cruelty and torture meted against her is because of her minor daughter who was living with her husband. Thus, the ingredients to constitute the offence under the provision of Section 498A of I.P.C. have been fully satisfied in the present case against the appellants. The relevant provisions of Section 498A read thus: B
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"498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means— F
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(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or H

- A (b) harassment of the woman where such
harassment is with a view to coercing her or any
person related to her to meet any unlawful demand
for any property or valuable security or is on account
of failure by her or any person related to her to meet
B such demand.”

21. The deceased was subjected to cruelty at the hands
of her husband and her in-laws and the evidence of the
prosecution witnesses and the circumstantial evidence makes
C it amply clear that she was harassed beyond limits by her in-
laws, which had caused her grave mental and physical injury.
The same had made her run away from matrimonial home on
several times and had ultimately resulted in her death. On the
issue that the above mentioned witnesses are interested
D witnesses and their evidence cannot be accepted by this Court
as contended by the learned counsel on behalf of the appellants
is also rejected in the light of the decision of this Court in the
case of ***Vishwanath Agrawal v. Sarla Vishwanath***
Agrawal¹, wherein this Court has held thus:

E “39.....In a matrimonial dispute, it would be
inappropriate to expect outsiders to come and
depose. The family members and sometimes the
relatives, friends and neighbours are the most
F natural witnesses. The veracity of the testimony is
to be tested on objective parameters and not to be
thrown overboard on the ground that the witnesses
are related to either of the spouse. Exception has
G been taken by the courts below that the servants of
the house should have been examined and that
amounts to suppression of the best possible
evidence.....”

H 22. Now, coming to the point of determining whether the

¹ (2012) 7 SCC 288

accused had abetted in the commission of suicide of the deceased as provided under Section 306 of I.P.C., the same cannot be proved with conclusive evidence in the light of the fact that the deceased in her dying declaration had clearly stated that she had consumed the poisonous tablets by mistake. The same was further corroborated by the doctor who had examined her and had declared her as stable and conscious enough to give a reasonable statement. Reliance has also been placed upon the decision of this Court in the case of *Bhola Turha v. State of Bihar*², wherein this Court has held thus:

“2. The conviction of the appellant is based solely upon the dying declaration. It has been found to be reliable. It was made by the deceased within about two hours from the incident and a few hours before his death. In his dying declaration, he has clearly explained how he came to be injured by the appellant. After carefully scrutinising the dying declaration, both the courts have come to the conclusion that it contains a truthful version as regards the manner in which the injuries were caused to him.”

23. Further, the accused were present inside the house at the time the deceased consumed the poisonous tablet and they had taken her to the hospital as soon as they realized that she was in a critical condition. Thus, even though the cruelty aspect meted on the deceased has been proved beyond all reasonable doubt, it cannot be said that the same had lead her to commit suicide or that the accused had abetted in the commission of the same, as is clear from the facts and circumstances of the present case. The appellant no.1 herein even though had behaved stoically in the beginning by calling

² (1998) 9 SCC 15

- A the act of the deceased as "epileptic fit", but as soon as she realized the gravity of the situation she called her son and they took her to the hospital for examination and treatment. This act of the accused clearly shows that they did not abet the deceased in the commission of the suicide, if at all it was a
- B suicide.

24. From the facts and circumstances of the present case and upon the examination of the body of deceased, it is clear that her death was a result of an accident and she had
- C mistakenly consumed the poisonous tablet as the same was kept with other medicines. Had the deceased wanted to implicate the accused, she would have revealed their names in the final moments before her death, as she had nothing to fear for and her antecedent showed that she had previously
- D filed a complaint against the accused when they harassed her. If the accused had any hand in her death, the same would have been revealed in the dying declaration of the deceased. Thus, the prosecution has failed to prove beyond all reasonable doubt that the accused had abetted the deceased in the commission
- E of suicide as provided under the provision of Section 306, I.P.C.

25. In view of the above observations made, it is amply clear that even though the accused had tortured and harassed the deceased because of which she was constantly running
- F away from her matrimonial home and had also filed a number of complaints against the accused, the same cannot be said to be the reason for her death in the light of the facts and circumstances of the present case and the dying declaration made by her.
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26. The learned counsel for the appellants has placed reliance upon the decision of this Court reported in the case of **Ramesh Kumar v. State of Chhattisgarh**³ at paragraph 22 wherein it is held that Sections 498A and 306 IPC are
- H independent and constitute different offences. Merely because

³ (2001)9 SCC 618

an accused has been held liable to be punished under Section 498A IPC, it does not follow that on the same evidence, he must also and necessarily be held guilty of having abetted the commission of suicide by the women concerned under 306 IPC. Therefore, the conviction and sentence for offence punishable under Section 306 read with Section 114 of the IPC of the present appellants is contrary to the legal evidence on record particularly, the dying declaration of the deceased and the conduct of the accused who took the deceased to the hospital. This fact has been grossly ignored by the courts below while convicting and sentencing the appellants for the aforesaid offences. Therefore, the conviction and sentence for the aforesaid offence is erroneous and accordingly it is liable to be set aside.

27. After evaluation of evidence on record and concurrent finding of fact recorded by the trial court and the appellate court, the appellants were convicted for the offences punishable under Section 498A and 306 read with Section 114 of I.P.C. The accused were acquitted for the offences punishable under Section 304B read with Section 114 of I.P.C. and Section 4 of the Dowry Prohibition Act, 1961 as they did not find any evidence on record to bring home the guilt of appellants for the offences punishable under Section 306 as there is no cogent evidence in this regard in the finding of fact. Therefore, the conviction and sentence for the offence punishable under Section 498A of I.P.C. with regard to cruelty is held to be proved by the courts below. The same is accepted by us and they are required to be convicted and sentenced for the offence punishable under Section 498A, I.P.C. The conviction and sentence passed by the High Court for the offence punishable under Section 306 read with Section 114 of I.P.C. is liable to be set aside, accordingly, we set aside the same.

28. Since, we have upheld the conviction for the offence punishable under Section 498A I.P.C., it is to be carefully

A examined by us taking into consideration the facts and circumstances of the case as to what sentence is required to be imposed upon the appellants. Keeping in view the age of the appellants i.e. the appellant No. 1-mother-in-law of the deceased who is said to be around 60 years of age and
B appellant No.2-sister-in-law of the deceased who is more than 35 years of age and having a child to take care of, we deem it fit and proper to limit the sentence to the period of imprisonment already undergone by them.

C 29. We partly set aside the impugned judgment and order dated 23.02.2015 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 101 of 2010.

D We confirm the conviction on the charge under Section 498A of I.P.C. and having regard to the facts and circumstances referred to above we direct that the period already undergone by the appellants in custody is the sentence. We modify and reduce the sentence to the period of imprisonment already undergone by them.

E 30. Since, we have stated that period already undergone is the sentence which we have modified in this judgment for the conviction under Section 498A of the I.P.C. and in pursuant to the impugned judgment and order of the High Court, the
F appellants have surrendered to undergo the imprisonment. Presently, they are undergoing sentence imposed by the High Court and therefore, we direct the Jail Superintendent, Rajkot Central Prison, Rajkot, Gujarat to release them forthwith, if not required in connection with any other criminal case.

G 31. Accordingly, the appeal is allowed to the aforesaid extent.