

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 3715 of 2023

In R/CRIMINAL APPEAL NO. 416 of 2023

**With
R/CRIMINAL APPEAL NO. 416 of 2023**

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**STATE OF GUJARAT
Versus
SURESHBHAI HONJIBHAI GAMIT**

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Appearance:

MS. C. M. SHAH, APP for the Applicant(s) No. 1

NOTICE SERVED for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 27/03/2023

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

ORDER IN

R/CRIMINAL MISC.APPLICATION NO. 3715 of 2023

In R/CRIMINAL APPEAL NO. 416 of 2023

1. RULE.

2. Though served, learned Advocate for the respondent has not appeared.

3. This application is filed for grant of Leave to Appeal against the judgment and order of acquittal dated 18-11-2022 passed by the

Court of Sessions Judge, Tapi at Vyara in Sessions Case No.8 of 2019, wherein the respondent-accused has been acquitted for the offence under Section 302, 201 of the I.P.C.

4. Learned APP has submitted that acquittal is based only on the ground that the dead body of the deceased was not identified on the basis of DNA report and therefore, the prosecution was not able to establish that the remains of the dead-body recovered during the course of investigation, was actually of deceased-Kamlaben.
5. It is submitted that however, there were other sufficient evidences to establish the identity of the dead-body namely on the basis of ornaments on the remains of the dead-body, which were identified by the son of the deceased. It is submitted that sufficient evidence and therefore, the prosecution was able to establish that the remains of the dead-body was that of deceased-Kamlaben.
6. Considering the aforesaid, the Court finds that this is a case where the respondent-accused was charged with murder of his own wife and the Court has thoroughly disregarded the fact that during the course of investigation, remains of the dead-body in the skeleton form were found buried in the very residential premises of the respondent-accused and once, there was sufficient evidence of identifying the remains of the dead-body of Kamlaben by the evidence of the son of the respondent-accused and Kamlaben on the basis of ornaments found on the remains of the dead-body.
7. In the opinion of the Court, by considering inability of the prosecution to establish the identity of the dead-body on the basis of DNA report, is not sufficient ground for acquittal.
8. Hence, the case is made out for grant of leave to appeal.

9. In view of the aforesaid, Leave to Appeal is granted. **Accordingly, present Criminal Misc. Application stands allowed.** Rule is made absolute accordingly.

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**ORDER IN
CRIMINAL APPEAL NO. 416 of 2023**

1. *The Appeal is admitted.*
2. Issue bailable warrant in the sum of Rs.5,000/- (Rupees Five Thousand only) against the respondent- original accused.

(A.Y. KOGJE, J)

सत्यमेव जयते

**THE HIGH COURT
OF GUJARAT**

(M. R. MENGDEY, J)

PARESH SOMPUA

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