

(2022) 09 GUJ CK 0035
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2484 Of 2008

State Of Gujarat	Vs	APPELLANT
Gadhavi Mahnardan Haridan & 4 Other(S)		RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 378, 378(1), 378(3), 417
Indian Penal Code, 1860 — Section 107, 114, 306, 498A, 504
Dowry Prohibition Act, 1961 — Section 3, 7

Citation : (2022) 09 GUJ CK 0035

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Jirga Jhaveri, Pratik B Barot

Final Decision : Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. By virtue of an order dated 25.08.2022 passed by this Court directing to issue the non-bailable warrant against the respondent Nos. 1, 4 and 5, the respondent Nos. 4 (Gadhavi Panuben @ Pushpaben D/o. Haridan Oghaddan) and 5 (Gadhavi Nimuben D/o. Haridan Oghaddan) are produced before the Court. So far as respondent No. 1 - Gadhavi Mahnardan (sic. Manhardan) Haridan is concerned, as per the report of the Police Sub Inspector, Harij Police Station dated 06.09.2022, which is produced on record, he is already expired as back as on 20.06.2020. A copy of death certificate is also annexed with the said report. In that view of the matter, the appeal is hereby abated qua respondent No. 1.

1.1 Further, it is pertinent to note that vide order dated 04.03.2020, the appeal was ordered to be abated qua respondent Nos. 2 and 3 as expired. Prelude:

2. This is an appeal, at the instance of State, filed under Section 378(1) (3) of the Code of Criminal Procedure, 1973 (herein after referred to as "the Code"), assailing the judgment and order dated 10.07.2008, passed in Sessions Case No.

6 of 2008, by the learned Additional Sessions Judge, Fast Track Court No. 3, Patan, recording the acquittal of the respondents - original accused.

Factual matrix:

3. Marriage of deceased Chandrikaben was solemnized with accused No. 1 – Gadhavi Mahnardan (sic. Manhardan) Haridan, prior to about nine years of the incident in question. In kariyavar, she was given 10 tola Gold, 1 kg. Silver, and also some clothes. In progeny, they have three children – two sons and one daughter. That, after the marriage, whenever the deceased visited her parental home, she used to inform about taunting by the respondents – accused saying she had not brought anything towards kariyavar and that, her mother was a beggar. It is further the case of the prosecution that when the deceased visited on Dussera, at that time, she informed the complainant that the respondents – accused used to give physical and mental torture and also demanded of Rs.10,000/- from them for doing business and hence, as the complainant had only Rs.3,000/- on hand, it was given to the deceased asking her to give rest after arranging for the same and sent the deceased back to her matrimonial home. However, on 07.11.2007 husband of the deceased – Mahnardan (sic.), the accused No. 1, informed the complainant on phone that her daughter (the deceased) had sustained burn injuries while blowing out the primus after preparing tea and was shifted to civil hospital and hence, the complainant rushed to the civil hospital where, on asking about the incident, the deceased informed that the accused used to taunt her about kariyavar and used to address her mother as beggar and abused her. The accused also told her that she (the deceased) and her mother (the complainant) were doing “dhandho” (flesh trade). Frustrated by such a treatment, she set herself ablaze by pouring kerosene on account of persistent harassment and torture by the respondents - accused persons. Thus, the respondents committed offence in question for which, FIR came to be registered against them for the offences punishable under Sections 306, 498-A, 504 and 114 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) and Sections 3 and 7 of the Dowry Prohibition Act.

3.1 Pursuant to registration of the Complaint, investigation came into motion and, after investigation, as there was sufficient evidence against the respondents - original accused persons, charge-sheet came to be filed against them before the learned Judicial Magistrate First Class, Harij. Since the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions under the provisions of Section 209 of the Code, where it was registered as Sessions Case No. 6 of 2008. The learned Sessions Judge framed the charge against the accused for the offences punishable under Sections 306, 498A, 504 and Section 114 of the IPC and also under Sections 3 and 7 of the Dowry Prohibition Act. The accused pleaded not guilty to the charge and hence, the trial commenced. In support, the prosecution has testified 14 witnesses and produced several documentary evidence. On conclusion of the trial, the learned Sessions Judge acquitted the accused persons from the charges levelled against

them. Grieved by the said order of acquittal, present appeal, at the behest of the State, has been filed.

Submissions:

4. Heard, Ms. Jirga Jhaveri, learned Additional Public Prosecutor for the appellant – State and learned advocate Mr. Pratik Barot appearing on behalf of the respondents - original accused.

4.1 The learned Additional Public Prosecutor has mainly contended that the learned trial Judge has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. She submitted that the impugned judgment of the trial Court is based on presumptions and inferences and thereby, it is against the facts and the evidence on record. The learned Additional Public Prosecutor further submitted that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby, has erred in recording the acquittal of the respondents – accused.

4.2 The learned Additional Public Prosecutor has contended that in the case on hand, in addition to the evidence adduced by the prosecution witnesses, dying declaration (Exh. 39) of the deceased is also there on the record, which is recorded none other than an Executive Magistrate, who is a gazetted officer, wherein, it is specifically stated by the deceased that she had committed suicide due to quarrels by her husband, the accused No. 1 on trivial issues, use of abusive language etc. and thereby, harassment to the deceased, and accordingly, she had committed suicide. The learned Additional Public Prosecutor further submitted that on the date of incident also, the accused No. 1 quarreled with the deceased and abused her and on being asked by the deceased not to use the abusive language, the accused No. 1 beat her with wooden log and told her that, she and her mother were doing dhandho (flesh trade) and accordingly, fed up victim, took such a drastic step and committed suicide by setting her ablaze by pouring kerosene. However, the learned trial Judge did not believe such a crucial evidence on record and thereby, has materially erred in acquitting the accused persons.

4.3 The learned Additional Public Prosecutor then took this Court through the evidence of the Executive Magistrate, who had recorded the dying declaration of the deceased (Exh. 39), who is examined as PW-9 Baluji Ditaji Solanki at Exh. 37. The learned Additional Public Prosecutor also invited attention of the Court to the dying declaration of the deceased, Exh. 39 and submitted that at the relevant time, as per the endorsement made by Dr. Kinnar, the patient (deceased) was conscious and oriented. She submitted that this witness has supported the case of the prosecution and narrated the contents of the dying declaration. Accordingly, in the submission of the learned Additional Public Prosecutor, the learned trial Judge has erred in not considering the evidence of this witness and thereby, acquitting the accused persons.

4.4 Further, the learned Additional Public Prosecutor also submitted that there

was persistent demand of money from the accused persons and the said fact can be substantiated by the evidence of the prosecution witnesses, more particularly, from the evidence of PW-1 Gajaraben Gagubhai Kachrabhai, Exh. 13, PW-3 Kiranbhai Gagubhai, Exh. 16 and PW-12 Labhudan Manubhai at Exh. 46. The learned Additional Public Prosecutor submitted that in the Complaint, Exh. 44, it was the specific case of the prosecution that deceased was subjected to cruelty and physical and mental torture on account of dowry, saying that she had brought a very small amount of kariyavar, which is proved by the aforesaid evidence and accordingly, the prosecution has proved its case beyond reasonable doubt and therefore also, the acquittal recorded by the learned Sessions Judge is required to be set aside and the accused persons be convicted and sentenced.

4.5 The learned Additional Public Prosecutor then submitted that considering all the material evidence and circumstances of the case, the learned Sessions Judge ought to have believed that suicide has been abetted by the husband of the deceased and other accused persons. Therefore, the impugned judgment and order passed by the learned Sessions Judge, being even otherwise, perverse, illegal, invalid and improper, deserves to be quashed and set aside.

4.6 The learned Additional Public Prosecutor further contended that as per the settled law, minor omissions and contradictions in the prosecution evidence may not be fatal to the prosecution case. Upon all such grounds, she has prayed to quash and set aside the order of acquittal, impugned herein, passed by the learned Sessions Judge as the same is improper, perverse and bad in law.

4.7 The learned Additional Public Prosecutor has taken this Court through the depositions of prosecution witnesses extensively as also the documentary evidence on record and urged with all vehemence at her command to allow this appeal by setting aside the impugned judgment and order passed by the learned Sessions Judge and to convict the respondents – accused for the crime in question.

5. Per contra, learned advocate Mr. Pratik Barot for the respondents – accused, while supporting the impugned judgment and order of the trial Court, submitted that the learned Sessions Judge has, after due and proper appreciation and evaluation of the evidence on record, has come to such a conclusion and has acquitted the accused, which is just and proper. He submitted that it is trite law that if two views are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality.

5.1 The learned advocate for the respondents – accused submitted that the ingredients of the offence alleged against the accused are not proved by the prosecution beyond reasonable doubt and there were several contradictions and

omissions in the evidence on record, more particularly, in the version of the complainant and in the dying declaration of the deceased, and therefore, the learned Sessions Judge has rightly acquitted the accused persons of the charges levelled against them.

5.2 The learned advocate for the respondents - original accused has heavily contended that in the present case much emphasis has been given to the dying declaration of the deceased (Exh. 39), however, a bare perusal of the same reveals no allegation qua the demand of dowry. Further, referring to the deposition of PW-7 - Dr. Sureshkumar Kantilal Jhaveri, Exh. 32, the learned advocate for the respondents - accused submitted that as per this witness, 2 to 3 degree burn injuries were found on the body, except soles of the feet and buttocks, and therefore also, no case is made out for suicide and it was an accidental death. Further, as per the deposition of PW-8 Dr. Rinaben Kaushikbhai Choksi, Exh. 35, who had treated the deceased, the deceased was not able to speak and on asking the husband of the deceased, he had stated that after preparing tea on primus, while blowing out the same, due to sudden flaring up, the deceased sustained burn injuries. He submitted that there is no reason to disbelieve the evidence of this witness and the learned Sessions Judge has rightly appreciated the same.

5.3 The learned advocate for the respondents - accused further submitted that the respondent No. 1 - husband of the deceased himself had taken the deceased to the hospital and accordingly, had there been any ill-intention on the part of the respondents and/or had the respondents abetted the offence, the respondent No. 1 would not have taken the deceased to the hospital for treatment and the said fact is suggestive of bona fide of the respondents. Besides, he submitted that, so far as the other accused persons than the accused No. 1, the husband are concerned, they were residing separate from that of the deceased and her husband and in the circumstance, there is no question of extending any cruel treatment to her by them.

5.4 The learned advocate for the respondents - accused further argued that if for the sake of argument it is believed that the case is not an accidental death but suicidal one, in that case also, the prosecution has not been able to prove the case beyond reasonable doubt as the ingredients of the offence alleged i.e. Sections 107 and 306 r/w. 114 IPC and Sections 3 and 7 of the Dowry Prohibition Act are not satisfied, and therefore also, the learned Sessions Judge has rightly come to such a conclusion, which requires no interference at the hands of this Court as there is no illegality, perversity and or any error of law. Eventually, he urged that this appeal may be dismissed.

5.5 In support, the learned advocate for the respondents - accused has relied upon following decisions:

- i) Satbir Singh v. State of Haryana, 2021 (0) AIJEL-SC 67447 = (2021) 6 SCC 1;
- ii) Ude Singh v. State of Haryana, 2019 (0) AIJEL-SC 64509 = (2019) 17 SCC

301;

iii) Gurcharan Singh v. State of Punjab, 2020 (0) AIJEL-SC 66559.

iv) Gurjit Singh v. State of Punjab, 2019 (0) AIJEL-SC 65382 = 2020 (14) SCC 264;

v) Manojbhai Laljibhai Kabaria v. State of Gujarat, 2007 (0) AIJEL-HC 217264 = 2007 (2) GLR 1697;

vi) State of Gujarat v. Rajendrakumar Kantilal Chauhan, 2022 (0) AIJ-GJ 244124

REASONING:

6. Heard the learned advocates for the respective parties and gone through the impugned judgment and order of the trial Court as well as the material on record.

6.1 Before advertng to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

6.2 Further, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrive at would not be arrived at by any reasonable person, and therefore, the decision is to be characterized as perverse.

6.3 Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. That the duty is cast upon the the appellate Court, in such circumstances, re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

6.4 In Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752, the Apex Court has observed that, "The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court.

Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court”.

6.5 Yet in another decision in *Chaman Lal v. The State of Himachal Pradesh*, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020, 2020 SCC OnLine SC 988 the Apex Court has observed as under:

“9.1 In the case of *Babu v. State of Kerala*, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P* (1975) 3 SCC 219, *Shambhoo Missir v. State of Bihar* (1990) 4 SCC 17, *Shailendra Pratap v. State of U.P* (2003) 1 SCC 761, *Narendra Singh v. State of M.P* (2004) 10 SCC 699, *Budh Singh v. State of U.P* (2006) 9 SCC 731, *State of U.P. v. Ram Veer Singh* (2007) 13 SCC 102, *S. Rama Krishna v. S. Rami Reddy* (2008) 5 SCC 535, *Arulvelu v. State* (2009) 10 SCC 206, *Perla Somasekhara Reddy v. State of A.P* (2009) 16 SCC 98 and *Ram Singh v. State of H.P* (2010) 2 SCC 445)

13. In *Sheo Swarup v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) “... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* AIR 1954 SC 1, *Balbir Singh v. State of Punjab* AIR 1957 SC 216, *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, *Khedu*

Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42)

“(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain

illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) "(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in *Dhanapal v. State* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

9.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn* (1984) 4 SCC 635, *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* 1992 Supp (2) SCC 312, *Triveni Rubber & Plastics v. CCE* 1994 Supp. (3) SCC 665, *Gaya Din v. Hanuman Prasad* (2001) 1 SCC 501, *Aruvelu v. State* (2009) 10 SCC 206 and *Gamini Bala Koteswara Rao v. State of A.P* (2009) 10 SCC 636)." (emphasis supplied)

9.3 It is further observed, after following the decision of this Court in the case of *Kuldeep Singh v. Commissioner of Police* (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no

reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

9.4 In the recent decision of *Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in *Umedbhai Jadavbhai* (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)

"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In *Sambasivan v. State of Kerala* (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.

While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

"8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal

though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala* (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P.* AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 80910) "5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal

against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* AIR 1952 SC 52; *Wilayat Khan v. State of U.P* AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”

(emphasis supplied).”

6.6 Keeping in view the aforesaid settled legal position, if the facts of the present case are seen, the respondents – original accused – the husband, the parents in-laws and the sisters-in-law of the deceased were charged with the offences punishable under Sections 306, 498-A, 504 and 114 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act, trial of which, was culminated into acquittal, which led the appellant – State to move this Court by way of this appeal.

6.7 The facts as emerge from the Complaint (Exh. 44), prior to about nine years, the respondent No. 1 (husband) and the deceased (wife) had tied the nuptial knot. During the marriage, gold, silver and some clothes were given in kariyavar to the deceased, however, the in-laws of the deceased used to taunt the deceased saying that a trivial amount of kariyavar was given to her and that her mother was a beggar. The deceased when lastly visited her parental home on Dussera, she had informed about the harassment and cruelty being meted out to her and also demand of Rs.10,000/- for business purpose by the respondent No. 1 – accused No. 1, the husband of the deceased against which, the complainant gave her Rs.3,000/-, which was available to her and assured to give rest on

arrangement being done. And then, on 07.11.2007, the complainant received a telephonic message about the deceased having sustained burn injuries while blowing out the primus after preparing tea and was shifted to civil hospital and hence, the complainant rushed to the civil hospital where, on asking about the incident, the deceased informed that the accused used to taunt her about kariyavar. The accused No. 1 used to say that her mother was a beggar and gave filthy abuses to her. The accused No. 1 also told her that, she (the deceased) and her mother were doing dhandho (flesh trade). Fed up with such a treatment, she set herself ablaze by pouring kerosene on account of persistent harassment and torture by the respondents - accused persons. Consequently, the FIR in question came to be registered against the respondents, for which, in trial, the respondent came to be acquitted of the charges levelled against them. Grieved by the said decision of acquittal, present appeal is filed before this Court.

6.8 Following oral as well as documentary evidence have been produced by the prosecution in support of its case:

Sr.

Particulars

Exh.

Oral Evidence

1

PW 1 - Gajaraben Gagubhai, the Complainant

13

2

PW 2 - Ajitdan Gagjibhai Gadhavi

14

3

PW 3 - Kiranbhai Gagubhai

16

4

PW 4 - Shiddharajsinh Shubhusinh Vaghela

17

5

PW 5 - Shivabhai Bhurabhai

27

6

PW 6 - Ganpatbhai Manilal

28

7

PW 7 - Dr. Sureshkumar Kantilal Zaveri

32

8

PW 8 - Dr. Rinaben Kaushikbhai Choksi

35

9

PW 9 - Baluji Ditaji Solanki

37

10

PW 10 - Khimajibhai Sojaji

41

11

PW 11 - Kiritkumar Govindji Erda

43

12

PW-12 Labhudan Manubhai

46

13

PW 13 - Pratapji Devusang

50

14

PW 14 - Shaharbhai Mafatbhai Rabari

52

Sr.

Particulars

Exh.

Documentary Evidence

1

Panchnama of place of incident

15

Sr.

Particulars

Exh.

2

Extract of Vardhi

18

3

Yadi to Executive Magistrate for dying declaration

19

4

Extract of Vardhi

20

5

Yadi for Post Mortem

21

6

Inquest Panchnama

22

7

Report/Form of police for post mortem examination of the dead body by civil surgeon

23

8

Receipt as to handing over the dead body

24

9

Report of Head Constable on duty at Civil Hospital

25

10

List of documents regarding incident from Head Constable, Shahibaug Police Station

26

11

Report of PSO for further investigation to DySP, Radhanpur

29

12

Report for further proceeding into the crime by DySP

30

13

Depute Order

31

14

P.M. Note

33

15

Certificate of Cause of Death

34

16

Original case papers of deceased of civil hospital, Ahmedabad

36

17

Yadi to Executive Magistrate for recording dying declaration

38

18

Dying Declaration

39

19

A copy of dying declaration

40

20

Order of PSO of Harij to ASI – Ishwarbhai

42

21

Complaint

44

22

Report of Officer of FSL Investigation Van

45

23

A copy of Police Station Diary of Harij Police Station

53

6.9 A perusal of the Complaint, Exh. 44 together with the dying declaration of the deceased, Exh. 39, it can be culled out that while the deceased was being subjected to physical and mental cruelty and harassment on the count of small amount of kariyavar, on the unfortunate day i.e. on the day of incident, she was abused saying the deceased and her mother were doing dhandho (flesh trade) and also beaten with a wooden log by the respondent No. 1 – accused No. 1. In reply to a question put forward to her while recording the dying declaration by the Executive Magistrate as to how the incident had occurred, the deceased had replied that, “for a few days, we, the husband and the wife, had quarrels on trivial issues and (he) used abusive language so often. Today, at about 10:00 hours in the morning, while having tea, when I asked (to accused No. 1) not to speak abusive language, (he) told me that you and your mother are doing dhandho (flesh trade) and by saying that, he beat me twice with a wooden log on my hand and hence (our) neighbour - Shaktidan came and rescued me. Since, I could not bear all this, I have committed suicide by pouring kerosene and setting myself ablaze and sustained burn injuries”. Further, it is also observed in the dying declaration that the “pt. is conscious & oriented” and therefore, as per the settled principle of law, when there is an endorsement of doctor about the status of the deceased person, the Court is required to place reliance upon that document, however, the learned Sessions Judge, appears to have lost sight of such a crucial aspect of the matter and has focused only on the allegations of dowry. Use of abusive words, allegation of deceased and her mother were doing

dhandho (flesh trade) coupled with beating twice on hands with a wooden log, etc. amounts to cruelty under Section 498-A, IPC, and leading the victim to commit suicide, amounts to abetment under Section 107 r/w. Section 306, IPC. But the same is not appreciated by the learned Sessions Judge. Nonetheless, such allegations are mainly made against the deceased respondent No. 1 – husband of the deceased.

6.10 Now, if the depositions of the prosecution witnesses are referred to, the prosecution has testified PW-1 Gajaraben Gagubhai at Exh. 13, who is the mother of deceased Chandrikaben and is the original complainant. She has deposed in accordance with her Complaint, Exh. 44 and stated that whenever her daughter visited her house, she used to tell that accused No. 1 – Manhardan and her sister-in-law - Pushpaben and mother-in-law – Takhatba, used to harass her (deceased). That, her son-in-law – Manhardan had asked the deceased to bring Rs.50,000/- but she did not give such an amount as she was not having the money and hence, they used to harass the deceased. She has further deposed to state that, lastly when the deceased visited her (parental) home on the occasion of 'Dussera', the deceased had informed that the accused No. 1 Manhardan had asked her to bring money else she would require to end her life by pouring kerosene upon herself and setting fire. It is also stated in the examination-in-chief that when the dying declaration was recorded by the learned Executive Magistrate, at that time, she was kept outside. Further, she has stated that as her daughter (deceased) was conscious, she asked the deceased about the incident, to which, she replied that so often she was asked to bring the money and as she did not give, accused Manhardan used to say that her mother was a beggar and would not give money. Therefore, she committed suicide by pouring kerosene. Though in cross-examination, it is admitted that her daughter was sensitive and on minor censure (thapko), she used to get emotional nonetheless, the fact remains that, on the day of occurrence, soon before the death, the husband i.e. the respondent No. 1 - accused No. 1 had inflicted two blows on the hand of the deceased with wooden log and used abusive language and also told her that the deceased and her mother were doing dhandho (flesh trade).

6.11 The prosecution has then testified PW-2 Ajitdan Gagjibhai Gadhavi, Exh. 14, who is a panch witness and declared as hostile.

6.12 Then comes the evidence of PW-3 Kiranbhai Gagubhai, Exh. 16, who is the brother of the deceased. In his examination-in-chief, he has stated that on asking the accused No. 1 to let him talk with the deceased, however, the accused No. 1 told him that since the deceased had burnt heavily, she was unable to talk, however, he has stated further that, when he rushed to the civil hospital along with her mother (complainant), they saw that the deceased was burnt heavily and on asking her, she (deceased) replied that there was frequent taunting upon her and that, she was told that her mother was a beggar and she and her mother were doing dhandho (flesh trade). That from last two days, the deceased was being beaten and was being subjected to cruelty and therefore, she committed

suicide by pouring kerosene on herself and ended her life.

6.13 The prosecution has then testified PW-4 – Siddhrajsinh Shubhusinh at Exh. 17, who was the Head Constable, serving at the Shahibaug Police Station. In his cross examination, he has admitted that when the dying declaration was being recorded, nobody else was present in the room and that, he had not seen deceased's brother Kiranbhai at the hospital, if at all he was present.

6.14 The prosecution has testified PW-5 Shivabhai Bhurabhai at Exh. 27, who was serving as a Police Constable at Shahibaug Police Station, who had given Vardhi to PW-4 Siddhrajsinh only and no other role has been played by him.

6.15 Next is PW-6 Ganpatbhai Manilal, Exh. 28, who was serving as PSO1 at Harij Police Station, who had made Depute Order, Exh. 29 for further investigation at the end of DySP, Radhanpur and in whose presence, the Complaint in question was registered.

6.16 The prosecution has then testified PW-7 Dr. Sureshkumar Kantilal Jhaveri at Exh. 32, who had performed post mortem of the deceased. He has admitted that there were some external burn injuries on the dead body and the same were ante mortem and the cause of death was shock due to burn injuries. He has also stated that such type of injuries are possible if any person sets himself ablaze by pouring kerosene.

6.17 The next one is PW-8 Dr. Rinaben Kaushikbhai Choksi, Exh. 35. She has admitted that while she was on duty on 07.11.2007 at about 0:50 hours in the morning, Chandrikaben (deceased) was brought for treatment; she was conscious but was not able to speak and her husband had informed that deceased had sustained burn injuries while blowing out primus after preparing tea.

6.18 Then is PW-9 Baluji Ditaji Solanki, Exh. 37, who was the Executive Magistrate and had recorded the dying declaration, Exh. 39 of the deceased.

He has narrated the averments of the dying declaration. He was duly cross-examined and has stated that, in the Yadi, Exh. 38, the endorsement of the doctor as to consciousness of the patient was made at 1:50 a.m. and he had started recording dying declaration at about 3:10 (a.m.) i.e. at after 1 hour and 20 minutes from such an endorsement made by the doctor. Nonetheless, he has stated that while recording the dying declaration, the deceased was suffering from pain and was tormented, however, she was replying too.

6.19 The prosecution has then testified PW-10 Khimjibhai Sojaji at Exh. 41, who was serving as night PSO at the Harij Police Station. He has deposed with regard to telephonic message received about the incident and procedure undertaken by him subsequent thereto.

6.20 Next is PW-11 Kiritkumar Govindji Erda, Exh. 43, who was serving as DySP, Radhanpur and had made investigation. In his cross examination he has stated

that the complainant had not informed about demand of dowry of Rs.50,000/-.

6.21 The prosecution has then testified PW-12 Labhudan Manubhai at Exh. 46, who is the brother of the complainant – Gajaraben. He appears to have deposed in accordance with the narration made in the Complaint, Exh. 44 and has also supported the version of the deceased that her in-laws were demanding dowry and harassing the deceased and also used to taunt her saying that deceased and her mother were doing dhandho (flesh trade). He has also stated that whenever she (deceased) met him, she used to complain about harassment and cruelty being meted out to her by her in-laws. He has, in his examination-in-chief, stated that the deceased had met him on Dussera at Harij S. T. Depot, where the deceased had informed that she had gone to her parental home and that her husband (accused No. 1) had demanded Rs.10,000/-. He has further deposed that his sister Gajaraben (the complainant) had told that since she did not have Rs.10,000/- at that time, she had given Rs.3,000/- and rest she would give on arrangement being done. Nonetheless, he appears to be the hearsay witness.

6.22 Next is PW-13 Pratapji Devusang, Exh. 50, who is the panch witness and has declared hostile.

6.23 The prosecution has then testified PW-14 Shaharbbhai Mafatbbhai Rabari at Exh.52, who was serving as Addl. PSI at Harij Police Station. He has stated that considering the facts of the incident in question, investigation was handed over to the DySP, Radhanpur. In his cross-examination, he has stated that since he had not registered the Complaint in question, he had not personal knowledge about the same.

6.24 Thus, upon re-appreciation and reevaluation of the evidence adduced by the prosecution, following salient aspects have been weighed with by the Court:

- i) there appears no direct evidence to connect the respondent Nos. 4 and 5 with the crime in question inasmuch as, indisputably, the accused No. 1 and the deceased were staying separate from them since long;
- ii) allegations of cruelty and harassment are there but mainly against the respondent No. 1 – original accused No. 1 qua whom the appeal is abated as expired;
- iii) even PW-1 Gajaraben W/o. Gagubhai Kachrabhai, has, in her deposition at Exh. 13 has mainly stated about the demand of money and harassment to the deceased by the accused No. 1 only;
- iv) PW-3 Kiranbbhai Gagubhai, Exh. 3 and PW-12 Labhudan Manubhai, Exh. 46 have also deposed mainly against the accused No. 1 only;
- v) last but not the least, the crucial evidence, viz. the deceased herself has, in her dying declaration, Exh. 39, stated nothing about the harassment and cruelty by the other respondents, except respondent No. 1 - accused No. 1;
- vi) standard of proof in criminal trial is to prove a case beyond reasonable doubt.

7. The Court has gone in detail the decisions relied upon by the learned advocate for the respondents, as referred to herein above. However, with a view not to burden this judgment, it is deemed proper to discuss only on i.e. the decision in Ude Singh (supra) rendered by the Apex Court, wherein, the term "abetment" is explained. It is observed that, abetment involves a mental process of instigating a person in doing something. In cases of alleged abetment of suicide, there must be a proof of direct or indirect acts of incitement to commission of suicide. It is further observed that in the case of accusation for abetment of suicide, Court would be looking for cogent and convincing proof of act/s of incitement to commission of suicide and whether a person has abetted in commission of suicide by another or not, could only be gathered from facts and circumstances of each case. In the instant case, as discussed herein above, there is no evidence of cruelty and harassment qua the surviving respondents i.e. respondent Nos. 4 and 5 and that, the prosecution has failed to prove its case beyond reasonable doubt.

8. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the Court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which, the administration of criminal justice revolves.

Conclusion:

9. Thus, on re-appreciation and reevaluation of the oral and the documentary evidence on record, as well as considering the settled legal position, it transpires that the prosecution has failed to prove the case against the surviving respondent Nos. 4 and 5 – original accused beyond reasonable doubt inasmuch as the ingredients of the offence alleged are not fulfilled. The Court has gone through in detail the impugned judgment and order and found that the learned trial Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the respondent Nos. 4 and 5 – original accused Nos. 4 and 5 beyond reasonable doubt.

10. For the forgoing discussion and observations, the impugned judgment and order dated 10.07.2008, passed in Sessions Case No. 6 of 2008, by the learned Additional Sessions Judge, Fast Track Court No. 3, Patan, recording the acquittal qua respondent Nos. 4 and 5 – accused Nos. 4 and 5, is confirmed. The present appeal, accordingly, fails and is dismissed.

10.1 Since the respondent Nos. 4 and 5 are produced before the Court in pursuance to the non-bailable warrant directed to be issued by this Court as

referred to herein above, they shall be released immediately, if not required in any other case. R&P be transmitted back to the trial Court concerned forthwith.