

(2024) 06 GUJ CK 0108
In the Gujarat High Court

Case No : Criminal Appeal No. 362 Of 1997 With Criminal Misc.Application No. 2 Of 2004

State Of Gujarat

APPELLANT

Vs

Vishnudas Govindram Sharma (Abated) & Ors

RESPONDENT

Date of Decision : 07-06-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 107, 114, 120(B), 143, 147, 149, 302, 304(B), 306, 498(A)
Code of Criminal Procedure, 1973 — Section 209, 313, 378, 417, 418, 423
Prohibition of Dowry Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113(A), 113(B)

Citation : (2024) 06 GUJ CK 0108

Hon'ble Judges : Sandeep N. Bhatt, J;J. C. Doshi, J

Bench : Division Bench

Advocate : Maithili Mehta, Abated, C J Vin

Final Decision : Disposed of

Judgement

J. C. Doshi, J

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 27.03.1997 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No.106 of 1994, whereby the respondents accused came to be acquitted for the offences under sections 143, 147, 149, 120(B), 302, 304(B), 498(A) read with section 34 and 114 of Indian Penal Code and under section 4 of the Prohibition of Dowry Act, the appellant – State has preferred present appeal under section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. Brief facts of the case is that daughter of the complainant got married with accused no.2 - Suresh on 15.04.1993. After marriage, daughter of the complainant - Pravina @ Poonam was treated well. But after few days, the husband and in laws of the Pravina @ Poonam started ill treating by taunting her and used to demand more amount of dowry. She was physically and mentally

tortured. Out of wedlock, on 28.01.1994, deceased Pravina @ Poonam gave birth to twins - Hetal and Dimple. On 12.02.1994, the in laws of Pravina @ Poonam with intention to kill her hatched conspiracy and poured kerosene and ignited her to death. Hence, FIR came to be filed against the respondents accused being C.R.No.I-77 of 1994 with Junagadh City Police Station.

3. In pursuance of the complaint lodged by the complainant with the Junagadh City Police Station for the offence under sections 143, 147, 149, 120(B), 302, 304(B), 498(A) read with section 34 and 114 of Indian Penal Code and under section 4 of the Prohibition of Dowry Act, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and obtained FSL report for the purpose of proving the offence. After having found sufficient material against the respondent accused, charge-sheet came to be filed in the Court of learned JMFC, Junagadh. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Junagadh as provided under section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Junagadh, learned Sessions Judge framed charge at Exh.14 against the respondents accused for the aforesaid offences. The respondent accused pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 14 and 15 of the impugned judgment and order.

6. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and false case has been filed against them.

7. We have heard learned APP for the appellant – State and learned advocates for the respondents and minutely examined oral and documentary evidence adduced before the learned Trial Court.

8. It is to be noted that during pendency of the present Criminal Appeal, respondent nos.1, 3 and 7 have expired. Qua them the appeal stands abated.

9. Original complainant - father of the deceased filed Criminal Revision Application No.131 of 1997 to decide about Stridhan kept in Bank Locker No.353 of SBI, Junagadh Branch which was seized by Investigating Officer during trial. The said Revision Application was partly allowed vide order dated 18.06.1997 with direction to District Court to pass order for disposal of Muddamal (Stridhan) Locker No.353. In pursuance of the said order, Superintendent, District Court, Junagadh was appointed as Court Commissioner. In the presence of Court Commissioner, Complainant and accused the locker was accessed and ornaments

of deceased found were given Inventory Report as Mark 175/1 by holding that accused has no right and when minor twins attains age of majority, ornaments be given to them equally. Nazir, District Court was appointed as Trustee and was further directed to keep the ornaments in safe custody as trustee.

10. Original Complainant - father of the deceased filed Criminal Misc. Application No.3042 of 2004 with prayer to be joined as party in captioned Appeal and to direct UTI Mutual Fund not to pay the amount of Units of Children's Gift Growth Fund Unit Scheme 1986 invested in the name of two minor twins vide Certificate Nos.107960033776 and 107960033777 each for 900 units and also 850 units each applied vide application forms No.984968 and 676081 dated 08.02.1994.

11. Heard learned APP Ms.Mehta for the appellant - State, learned advocate Mr.C.J.Vin for remaining respondents - accused. Learned advocate Mr.K.B.Anandjiwala was appearing for original complainant - Balram Rajpal. Death certificate of Balram Rajpal is produced on record who expired on 30.03.2014 and it is confirmed by learned APP. Death certificate is taken on record.

12. Learned advocate Mr.Aditya Chokshi submitted that he has instructions to appear on behalf of two daughters of deceased, who were 10 days old at the time of incident and now major and practicing as Doctor in Ahmedabad. Vide order dated 05.06.2024, we have permitted learned advocate Mr.Aditya Chokshi to file Vakalatnama in Registry on behalf of original victim of incident.

13. Learned advocate Mr.Aditya Chokshi as well as learned advocate Mr.Vin jointly submitted that mutual understanding is arrived at between the parties viz. accused and real victim i.e. daughters of the deceased whereby daughters of the deceased decided not to contest order of acquittal. Learned advocate Mr.Chokshi tendered joint purshish of understanding dated 05.06.2024 signed by both the parties before this Court, which is taken on record. Learned APP has also gone through joint purshish of understanding tendered and taken on record and also got acquainted with the aspect that parties to dispute decided inter-se not to fight any more.

14. Keeping abreast joint purshish of understanding arrived at between the parties indicating that vengeance between the parties has been melt down, learned APP in her utter fairness argued the matter in that context and manner.

15. Learned APP sought to submit that on going through impugned judgment and order it gives impression that learned Trial Court has not appreciated the evidence properly. She would submit that all the circumstances which are emerging from record, more particularly, opinion of Dr.Mithawala, Civil Surgeon and situation in which position of dead body of deceased was found charred, clearly indicates that deceased was murdered by the accused as kerosene was poured upon her by them. She would further submit that there are other several circumstances on record which indicate homicidal death of deceased - Poonam. Firstly, it can be noticed that lower part of body was burnt severely compared to

upper part of body which is not normally seen in suicidal death. Lower part of left leg of deceased was detached and was found separate, this is impossible in case of suicide. It is further submitted that in the present case, heel / sole (pag na taliya) of the deceased was burnt, which is not possible in suicidal case. It is also argued by learned APP that no match box is found on the spot but it is found from pooja room and though incident took place in presence of accused nos.3 and 5, there is no shout or call to any other person to douse fire. All these circumstances lead to say and establish that deceased was murdered. It is submitted that learned Trial Court took contrary view to believe that death is suicidal without supplying cogent and comprehensive reasons and therefore, it makes the impugned judgment and order vulnerable and required to be interfered as patent illegality has been committed by the learned Trial Court. It is submitted that the Court below firstly has started viewing entire allegation of dowry as false and then decided whether case would fall under section 306 and 304(B) or under section 302 of IPC. This is absolutely erroneous approach on the part of the learned Sessions Court. The Court was firstly required to address the issue whether the deceased was killed or it is was suicidal death and then the Court was required to re-examine whether the deceased was meted with cruelty both physically or mentally and whether there is any evidence of dowry.

15.1. Learned APP would further submit that marriage span was just of 10 months and charge of offence under section 306 of IPC i.e. abetment of suicide and section 304(B) of IPC i.e. dowry death were levelled and alternatively charge of murdering the deceased was made. In these circumstances, presumption under section 113(A) and 113(B) of the Evidence Act is attracted but the learned Trial Court did not author any reasons to disbelieve why presumption is not attracted. It is submitted that theory of soon before death is also allowed to go by. It is submitted that impugned judgment and order suffers from manifest illegality and perverse and required to be set aside despite learned advocate for the daughters of the deceased decided not to contest acquittal appeal of the accused.

15.2. Upon above submissions, learned APP submitted to allow the present Criminal Appeal and reverse the judgment and order to conviction against surviving accused and pass appropriate punishment.

16. Learned advocate Mr.Vin for surviving accused apart from referring to joint purshish of understanding indicate melt down vengeance between the parties would submit support impugned judgment and order recording acquittal. He would submit that presumption of innocence which runs in favour of the accused at all stage of trial has been put on higher point as acquittal is recorded. He would submit that learned Trial Court has extensively discussed, analyzed and appreciated evidence on record and believed that root of allegation i.e. dowry is not proved and therefore, rest of charges could not be established. He would further submit that when serious doubt has been raised on two contradictory evidence of prosecution regarding suicidal death and homicidal death of

deceased, benefit of doubt should go in favour of the accused and rightly has been considered by the learned Trial Court in favour of the accused to acquit them. Therefore, in this appeal against order of acquittal, he urged the Court not to interfere with impugned order.

16.1. Making above submission, learned advocate Mr.Vin appearing for the accused submits to dismiss the appeal.

17. It is trite and settled that merely parties contesting each other in criminal matters in non compoundable offence reaches to understanding of compromise, would by itself would not be reason to acquit the accused but at the same time, the Court has bear in mind understanding arrived at between the real contesting parties i.e. daughters of deceased who left two daughters aged 10 days while marching her last journey to heaven are real victims. They are now major and practicing Doctors aged 30 years and entitled to the understanding with the accused. There decision not to contest the order of acquittal may not ipso facto result in confirming order of acquittal but should be respected.

18. Joint pursish of understanding is already taken on record. Understanding between the parties reads as under :-.

"3. It is further submitted that First party is Father of the Second party to the instant deed and were 15 days old when the incident took place on 12.02.1994. Thereafter, the Second party grew up with Grandmother (Respondent No.3) and Uncle (Respondent No.5) till completion of their 12th standard.

4. It is submitted that thereafter the twins have moved to Rajkot, acquired Loan for further studies. After completion of higher medical studies. They have become doctors and are practicing as medical officer in Ahmedabad post 2019.

5. It is submitted that vide inventory report mark 175/1, the Stridhan (Gold ornaments) of deceased are in safe custody of Nazar- District Court Junagadh by virtue of an order passed by the Additional Sessions Judge and Fast Track Judge, Junagadh dated 03.11.2004.

6. It is submitted that by virtue of the above said order Nazar District Court Junagadh was directed to hand over the ornaments kept in safe custody to Second party when they attain the age of majority. It is submitted that yet the second party has not approached the Learned District Court Junagadh for releasing the ornaments kept and drawn vide Inventory Report mark 175/1. Hence, the ornaments of deceased may be handed over to second party in pursuant to the order dated 03.11.2004 passed by the Additional Sessions Judge and Fast Track Judge, Junagadh.

7. It is submitted that the second party do not wish to contest the order of Acquittal on behalf of the parental family of deceased and on their behalf being 'Victim'.

8. It is submitted that the first party has today handed over two Cheques being

Cheque No. 271132 and 271133 of SBI Bank, Junagadh in favor of second party to the tune of Rs. 5,00,000/- each for welfare and wellbeing of the second party. It is submitted that the second party has accepted the above cheques from First party.

9. It is submitted that vide Certificate No. (1) 107 96 003 3776 (2) 107 96 003 3777 (3) 107 94 423 012 46 (4) 1079 441 3012 47 the Original Complainant the father of deceased and the Respondent No.1 (Father of First Party) had invested in UTI Children's Gift Growth Fund Unit Scheme, 1986 in the year 1994 and 1995 respectively. Which annexed as Annexure-B to the captioned CRMA No. 3042/2004.

10. It is submitted that the First party has tendered willful consent to deposit above investment made in favor of Second Party to the bank account of Second party directly since the Second party are aged 30 at present and for the same the First party has No Objection. The bank details of both the Second party is as follows:

11. HETAL SURESH SHARMA- Account No. 50100269175331 HDFC Bank- Branch- Iscon Cross Road, IFSC- HDFC0009173

12. DIMPAL SURESH SHARMA- Account No. 029401542295 ICICI Bank- Branch- Shahibaug, IFSC-ICIC0000294.

13. It is declared and submitted by First Party that neither today nor in future the aforesaid ornaments of deceased drawn vide Inventory Report mark 175/1 and the aforesaid UTI Children's Gift Growth Fund Unit Scheme, 1986 will be claimed or disputed by First Party or by any other Respondents of captioned Appeal or their Legal Heirs by way of any legal proceedings before any forum or coram.

14. It is submitted and declared by First party that the alive Respondents of captioned Appeal will not initiate any legal or quasi legal proceedings / litigation against Second Party or parental family of Deceased in future."

19. In background of above facts, let refer few decision which earmark scope and ambit of appeal against judgment of acquittal of accused.

20. The scope and ambit of the appeal against the judgment and order recording acquittal has been succinctly explained by the Hon'ble Privy Council in case of Sheo Swarup Vs. King Emperor, AIR 1934 Privy Council 227, wherein the Privy Council has explained the scope and ambit of the appeal u/s 417 of the old CrPC, which has been replaced by section 378 of the CrPC. In para 8 and 9 of the judgment, the Hon'ble Privy Council has exposed the scope of appeal against the judgment and order of acquittal, which reads as under:-

"8. There is, in their opinion, no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in

which the lower Court has "obstinately blundered" or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

9. Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

21. In case of *Ahir Raja Khima Vs. State of Saurashtra*, AIR 1956, in a decision of three Judges Bench of the Hon'ble Apex Court, Hon'ble Mr. Justice Vivian Bose (as he then was) authored the majority view to approve the ratio laid down by the Privy Council in case of *Sheo Swarup* (supra). Doctrine of "compelling reasons" is added to scope of interference in appeal against acquittal. Relevant findings read as under:-

"1. The only question in this appeal is whether the High Court had in mind the principles we have enunciated about interference under S. 417, Criminal P. C. when it allowed the appeal filed by the State against the acquittal of the appellant. It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial Court was wrong. '*Almer Singh V. State of Punjab*,' AIR 1953 SC 76 at pp. 77-78 and if the trial Court takes a reasonable view of the facts of the case, interference under S. 417 is not justifiable unless there are really, strong reasons for reversing that view, '*Surajpal Singh v. State*,' AIR 1952 SC 52 at p. 54."

22. We may also refer the judgment of *Muralidhar v. State of Karnataka*, (2014) 5 SCC 730, wherein the Hon'ble Apex Court dealing with the appeal against acquittal, established guidelines, which reads thus:-

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

23. We may with profit also refer the judgment of Babu Sahebagouda Rudragoudar v. State of Karnataka, 2024 SCC OnLine SC 561 as to minimize the scope of interference by the learned Sessions Court for reversing the judgment of acquittal recorded by the learned trial court. The Hon’ble Apex Court has carved out four corners of the following principles for the learned Sessions Court to interfere with the judgment and order of acquittal recorded by the learned trial Court.

“(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

24. In case of Mallappa v. State of Karnataka, (2024) 3 SCC 544, the Hon’ble Apex Court observed as under:-

“25. . No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third

consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-views theory has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law.

42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

It cannot go unnoticed that that in view of principles of criminal jurisprudence, presumption of innocence runs in favour of the accused unless proven guilty. This presumption continues to operate at all stages of the trial. The presumption of innocence gets established when the charge alleged against him ends in

acquittal. The presumption doubles once the accused is proved innocent. A person/ prosecution, who intends to prosecute the accused for charge, in which he has been acquitted after appreciation of evidence on record gets on higher footings and his expected to be rebut the same in appeal.

25. Keeping abreast limited jurisdiction to interfere with impugned judgment recording acquittal, if we go through entire evidence recorded before the learned Trial Court, few facts are required to be noted. That complainant - late Balram Rajpal was sitting Judge at the time of incident and he was Chief Metropolitan Magistrate, Ahmedabad. At the first instance, when he met police officer in hospital where dead body by husband was kept, he did not chose to file complaint. Firstly, complaint was filed against four accused for the offence under section 306, 304(B) and 498(A) of IPC. Record reveals that complainant, throughout investigation of offence has levelled allegations against Investigating Officer, resulting change of Investigating Officer one after another. After two months of incident, complainant doubted autopsy report conducted by panel of Doctors and took opinion of Dr.Mithawala, Civil Surgeon whom he was previously knowing, as was Civil Surgeon in native of complainant and raised doubt that it was not case of suicidal death of deceased and succeeded in adding charge of section 302 of IPC. Further accused were added subsequently though no averments were ever made against accused nos.4 and 6. Two more persons were also tried to be added as accused which could be discern from deposition of complainant. It appears that complainant was well versed with provisions of law and tried to arraign all members of family of accused no.2 as accused.

26. Deceased left heaven only after 10 months of marriage span and during this time period, she only visited once to her parental home to meet complainant and other relatives. During this time period, complainant or his wife though visited nearby Village Keshod (around 30 km away from Junagadh) did not visit matrimonial home of deceased, who had given birth to twin sisters just 10 days back of incident. Though it is auspicious occasion, complainant or his wife jointly or individually did not visit matrimonial home of deceased to ask about well being of their daughter.

27. The complainant throughout proceedings took keen interest in every stage of investigation but did not move application seeking custody of 10 days old daughters of deceased. It is significant as allegations of demand of dowry as well as allegation of physical and mental cruelty to deceased were made.

28. Complainant moved applications before learned CJM for getting ornaments being Shtridan of the deceased.

29. In background of above undisputed aspect which comes on record, would expose that beside FIR, the complainant made an endeavour to see that all the accused are put to clutches and remain behind bar. As observed herein-above, even complainant succeeded to add offence of section 302 of IPC and also succeeded in getting transfer of investigation of the offence from PSI, City Police

Station to Dy.S.P. and then to CID (Crime). All of them have put their hand in investigation upon instruction of complainant.

30. Learned Sessions Judge has extensively discussed deposition of complainant - Balram Rajpal in para 19 and noted 5 contradictions in the very said para. These contradictions becomes important and material as complainant at relevant was sitting Chief Metropolitan Magistrate, Ahmedabad which add presumption that complainant was aware of provision of law. The contradiction were in regard to dowry allegation. Para 21 of the impugned judgment also records contradiction emerging from deposition of complainant, so also from para 23 of the impugned judgment.

31. Having re-scanned evidence of complainant being core to the allegation of demanding dowry and meting cruelty both physically and mentally to deceased - Pravina @ Poonam by the accused, there are stark contradiction recorded in the impugned judgment. Since allegation of dowry is basis for filing FIR and arraigning accused for the alleged offence, apart from deposition of complainant, conduct of complainant is note worthy. As noted earlier, he has visited deceased not a single time during marriage span of deceased with accused. He is not eye witness or direct witness to physical or mental meted out to the deceased. What could also be noticed that during 10 months of marriage span, deceased - Pravina @ Poonam visited her parental home only once and at that time, she made general complaint to the complainant (as per deposition) that people at her matrimonial home taunted her for not bringing dowry. These are general and paltry statement and are insufficient to establish allegation of dowry as defined under section 3 of the Dowry Prohibition Act. Two letters at Exh.61 and Exh.91 written by deceased rather diminish allegations of demand of dowry as no whisper of word is made in the said letters. By list of articles and letters, the prosecution tried to prove demand of dowry but those are unverified and remains unproved documents and therefore, it does not establish allegation of demand of dowry.

32. Another witness was brother of deceased - Suryakant Rajpal. Contradiction which emerges from his deposition is recorded in para 24 of the judgment with one glaring fact that deceased had never given anyone's name during her life time about persons demanding dowry or extending cruelty or harassment physically or mentally. Para 25 and 26 of the impugned judgment also records other contradictions.

33. Sister of the deceased viz. Kavita was also examined and in her cross examination, she has admitted various aspect. This is elaborately discussed in para 32 of the judgment and that touches root of the case.

34. To be noted that when deceased - Pravina @ Poonam has given birth to twins sisters, accused have immediately invested sizable amount in the name of both the girls in UTI Mutual Fund at relevant time. Another aspect which could be noticed that brother of the deceased as well as her sister Bhartiben came at the

time of "Namkaran Vidi" of daughters. Brother of the deceased is examined but prosecution has not examined Bhartiben, who is important witness. Learned Sessions Judge has made over all analysis of demand of dowry in para 38 noting that FIR lacks allegation of demand of dowry and also verified deposition of each witness to the incident who are near relatives of deceased and found inconsistency in evidence, improvement and contradiction.

35. The record speaks that at first instance even complainant did not doubt death of the deceased as homicidal death. He filed complaint under section 306, 304(B) and 498(A) of IPC but later on after obtaining report from Dr.Mitawala, offence under section 302 of IPC is added. Autopsy report by panel of Doctors is clear as crystal and opined that deceased was seriously burnt. Her left leg was detached from 1/3rd portion because of severe burn injury. Opinion was clear that it is suicide. Doubt was created by way of opinion from Dr.Mithawala. However, Dr. Mithawala did not gave clear opinion to say that it is homicidal death or suicidal death, but opened one widow to investigate on that aspect. However, no further investigation in this regard was undertaken.

36. Learned Sessions Judge has discussed this issue in para 43, 44 and 45 of the judgment along with deposition of witness - Chaganlal Solanki - PW-1, who has taken photograph subsequent to death of the deceased and appreciated two opinion, one given by panel of Doctors and one by Civil Surgeon in background of relevant facts coming from deposition including spot panchnama. Deposition of Fire Brigade officer is also taken help, so also inquest panchnama and panchnama.

37. It is observed by learned Sessions Judge that when photographer Chaganlal reached to the spot, deceased was lying charred in position facing to earth. To be remembered that she was severely burnt. Photograph of dead body of deceased was taken with help of police officer who had hold the hands of dead body to facilitate photographer to take photos from all sides, dead body was rolled over on both sides. Dead body was in charred and it was rolled for more than once. One of the part of the dead body was detached. Panel of Doctors opined that detachment of left leg was due to fourth degree burn. It is deep burn, in such situation detachment of body part is not unexpected thing to lead to conclusion of homicidal death. Dr. Mithawala who opined homicidal death of deceased could not establish better opinion and got support of any other documentary evidence on record. Learned Sessions Judge reached to conclusion that prosecution has failed to prove case of killing of deceased.

38. That brings us to last submission that presumption aspect available under section 113(A) and 113(B) of Evidence Act has not been analyzed and discussed by the learned Sessions Judge as marriage span of the deceased was just 10 months. Firstly, we may note that it is presumption and not substantial proof. To step towards presumption, prosecution is required to establish foundational facts. To establish presumption under section 113(A) of the Act which is available for commission of offence under section 306 of IPC, prosecution needs to prove very

ingredients of section 306 of IPC as well as cruelty and harassment defined in section 498(A) of IPC. To attract ingredients of abatement of suicide, ingredients of section 107 of IPC needs to be establish.

39. Alike to apply presumption under section 113(B) to prove offence under section 304(B) of IPC, principle of 'soon before death' deserves to be established meaning thereby some act which immediately took prior to death of deceased which led her to death. In order to attract essential ingredients of section 113(B) of the Evidence Act, there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of woman [see : G.V.Siddaramesh v/ s. State of Karnataka (2010) 3 SCC 152]. Thus presumption under section 113(A) or 113(B) of Evidence Act cannot be solitary factor to establish guilt against accused. Presumption has role to play once foundational facts and material are proved.

40. It appears that before deceased committed suicide in intervening night, she along with her husband and family members were sitting in living room and watching TV. No incident is establish on record which could lead to believe expression "soon before death" being essential to prove offence under section 304(B) of IPC. In *Kashmir Kaur v/s. State of Punjab* [AIR 2013 SC 1039], Hon'ble Apex Court has referred to following ingredients being necessary to attract provision of section 304(B) of IPC.

"(i) to attract the provisions of Section 304B IPC the main ingredient of the offence to be established is

(a) that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death."

41. Thorough discussion of evidence by learned Sessions Judge and review same lead us to believe that there is no demand of dowry established or no cruelty and harassment soon before death is established.

42. We, sitting in Appellate Court and keeping in mind limited jurisdiction to be

exercised while deciding appeal against order of acquittal, do not find any illegality or perversity in the impugned judgment.

43. Before parting with the judgment, it is required to be noted that articles and ornaments of the deceased was seized by the Investigating Officer during investigation but was never produced before the learned Sessions Court as Muddamal and was kept in Bank Locker No.353 of SBI, Junagadh Branch.

44. Criminal Revision Application No.131 of 1997 was moved before this Court seeking various reliefs also challenging acquittal order by the original complainant as well as seeking retrial and to decide articles and ornaments kept in Locker No.353 of SBI, Junagadh Branch. Two prayers viz. prayer of retrial and acquittal was not pressed by the complainant. The Revision Application was partly allowed vide order dated 18.06.1997 directing the District Court to pass consequential order for disposal of articles and ornaments kept in Locker No.353.

45. In pursuance of the above order passed by Division Bench of this Court, by order dated 03.11.2004 District Judge has appointed Superintendent, District Court, Junagadh as Court Commissioner and in presence of Complainant and accused the locker was accessed and Inventory Report as Mark 175/1 was prepared with regard to ornaments of deceased found from said locker. Nazir of the District Court was appointed as Trustee and the ornaments was kept in safe custody.

46. By order dated 03.11.2004, Sessions Court, Junagadh held that accused has no right over the ornaments found from locker No.353 and it was ordered to hand over to the victim of incident i.e. daughters of the deceased - Hetal and Dimple once they attain majority.

47. Learned advocate Mr.Aditya Choksi and learned advocate Mr. Vin fairly submitted that order is not yet complied and ornaments are not handed to two daughters and they jointly request to pass order directing Nazir, District Court to hand over ornaments to both daughters of the deceased, as they have attained majority.

48. In the above peculiar facts and circumstances, it is needless to say that order dated 03.11.2004 passed by the learned Sessions Court, Junagadh is required to be complied with in letter and spirit and in this circumstances, Nazir, District Court or officer in whose custody ornaments of deceased - Pravina @ Poonam is lying as per Inventory Report at Mark 175/1 shall hand over the ornaments to daughters of the deceased i.e. Hetal and Dimple after due and proper verification immediately.

49. Another request made by the parties is that investment lying in UTI Mutual Fund under Children's Gift Growth Fund Unit Scheme, 1986 in name of two daughters viz. Hetal and Dimple vide Certificate Nos.(1) 107 96 003 3776 (2) 107 96 003 3777 (3) 107 94 42 3012 46 (4) 107 94 41 3012 47 be paid to them with accrued interest thereon, if any and to that effect direction be given to UTI

Mutual Fund to pay the amount. Initially, original complainant has resisted to give this amount to daughters but the original complainant has passed away and father of the daughters i.e. accused no.2 has no objection in giving back the invested amount to the daughters. Under the circumstances, UTI Mutual Fund is expected to disburse the amount invested including accrued interest, if any, vide Certificate Nos.(1) 107 96 003 3776 (2) 107 96 003 3777 (3) 107 94 42 3012 46 (4) 107 94 41 3012 47 in favour of holder of certificate viz. Hetal Sureshkumar Sharma and Dimple Sureshkumar Sharma, as they have become major.

50. The daughters viz. Hetal Sureshkumar Sharma and Dimple Sureshkumar Sharma are at liberty to move UTI Mutual Fund to get the invested amount disbursed in their favour and in turn UTI Mutual Fund is expected to disburse the amount in favour of daughters - Hetal Sureshkumar Sharma and Dimple Sureshkumar Sharma including accrued interest, if any after following due procedure, as both of them have become major and guardian - father of daughters - accused no.2 has no objection.

51. For the reasons stated herein-above, we find no merit in this Criminal Appeal. The Criminal Appeal deserves no consideration, requires to be dismissed and accordingly, it is dismissed except for accused no.1,3 and 7 against whom appeal stood abated as they died during hearing of the appeal. Bail and bond of each accused stands discharged. Judgment and order dated 27.03.1997 delivered in Sessions Case No.106 of 1994 by the learned Sessions Judge, Junagadh is approved. Record and Proceedings be send back. Valuable and Non valuable Muddamal if any, be disposed of as per procedure, if already not disposed of.

52. In view of disposal of main criminal appeal, Criminal Misc. Application No.2 of 2004 does not survive and accordingly, stands disposed of.