
(2013) 05 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 950 of 1996

State of Gujarat

APPELLANT

Vs

Yusufbhai Alibhai Sipai

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 107, 306, 498A, 498A

Citation : (2013) 3 GLR 2260

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : H.K. Patel, APP for the Appellants No. 1, for the Appellant; Hemant B. Raval, Advocate for the Opponent(s)/Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—The challenge in this appeal is directed against the judgment and order dated 06.06.1996, rendered by the learned 4th Extra Assistant Judge, Rajkot, in Sessions Case No. 293 of 1993, whereby the respondent-accused has been acquitted of the charges under Sections 498A and 306 of the Indian Penal Code. Briefly stated, the case of the prosecution is as follows:

1.1. The complainant, Umarbhai Nanubhai, filed a complaint on 11.05.1993, before the "B" Division Police Station, Rajkot, which was registered as I-C.R. No. 186 of 1993, to the effect that his daughter Nasimbanu was married to the respondent about 7 years before the incident that took place on 06.05.1993. After her marriage, Nasimbanu and the respondent started to live separately from the joint family at Nava Thorala. The respondent used to frequently harass and beat Nasimbanu, who was fed up with this behaviour of the respondent. Nasimbanu used to go to the house of the complainant frequently. With the persuasion of the elders of society, she was sent back to her husband's house.

According to the complainant, the respondent did not do any work and the mother of the respondent used to provide grains and other necessities to the deceased. There was no change in the behaviour of the respondent. The respondent was in the habit of consuming liquor, and under its influence he used to inflict physical and mental torture upon Nasimbanu. He also threatened and taunted her by telling her to go away and die, so that he could marry another woman who would bring sufficient money and dowry. As per the complaint Nasimbanu, fed up with the harassment by the respondent, came to the house of the complainant and told him that the respondent is inflicting great torture upon her. She then said that she would like to go to the house of her mother-in-law, and left the house of the complainant at about 9:00 AM, with her son Mohsin, aged about 6 years. When Nasimbanu did not return the whole day and even at night, the complainant searched for her in the houses of relatives and friends, but the whereabouts of his daughter and her son could not be found. Late at night, the complainant was informed that the dead bodies of a woman and child had been found from the Aaji Dam. The complainant went to the mortuary of the Government Hospital and saw that the dead bodies were those of Nasimbanu and her son Mohsin. The complainant then gave a statement to the Superintendent of Police.

1.2. It is the specific case of the prosecution, based upon the complaint, that Nasimbanu committed suicide with her son Mohsin, due to the physical and mental torture meted out to her by the respondent. Upon registration of the complaint, the investigative machinery was set into motion. The statements of witnesses were recorded and an inquest was held on the dead bodies, which were sent for autopsy. A Panchnama of the scene of offence was prepared. At the end of the investigation, as sufficient incriminating material was found against the respondent, he came to be charge-sheeted before the learned Chief Judicial Magistrate, Rajkot. As the offence u/s 306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court (hereinafter referred to as "the Trial Court") where it was registered as Sessions Case No. 293 of 1993. The Trial Court framed the charge against the accused at Exh. 1, which was read over and explained to the accused, who pleaded innocence and claimed to be tried.

2. Accordingly, the case was put to trial. In order to bring home the guilt of the accused, the prosecution examined as many as 12 witnesses and produced voluminous documentary evidence. No defence witnesses were examined. After recording the evidence of the prosecution witness, the Trial Court explained to the accused the statements appearing against him in the evidence of prosecution witnesses and recorded his statement u/s 313 of the Code of Criminal Procedure, 1973 ("the Code" for short). The defence of the respondent was that of total denial.

3. After appreciating and evaluating the evidence on record, the Trial Court recorded a finding of acquittal in favour of the respondent, having arrived at the

conclusion that there was no evidence on record to prove that the deceased had died a suicidal death, or that the respondent had inflicted cruelty upon the deceased and abetted her suicide. Aggrieved by the judgment and order of the Trial Court, the appellant is before this Court by way of the present appeal.

4. Mr. H.K. Patel, learned Additional Public Prosecutor for the appellant, has submitted that though some of the prosecution witnesses, such as the father, mother and brother of the deceased have been declared hostile, those portions of their testimonies that support the case of the prosecution can be taken into consideration for corroboration. However, the Trial Court has failed to appreciate the testimonies of the prosecution witnesses in a proper manner. It is further submitted that all the prosecution witnesses have deposed that the respondent was in the habit of consuming liquor and beating the deceased thereafter. It has also come in the evidence that the respondent never used to do any permanent work and the deceased had to depend upon her father and mother-in-law for her household requirements. There is sufficient evidence on record to indicate that there were frequent quarrels between the respondent and the deceased, especially when the respondent was under the influence of liquor. It had become difficult for the deceased to live peacefully and in such circumstances she was compelled to commit suicide with her six-year-old son. Learned Additional Public Prosecutor has further submitted that the Trial Court has not considered the relevant parts of the testimonies of the prosecution witnesses in a legal and proper manner. Had that been done, a finding of acquittal in favour of the respondent could not have been rendered. It is further submitted that the Trial Court has erred in recording a finding that the deceased did not commit suicide, but her death was an accidental one. It is urged that no lady would die along with her 6 year old son, had she not been driven to her death by the cruelty and ill-treatment meted out to her. Learned Additional Public Prosecutor has forcefully submitted that the Trial Court has misread the evidence of the complainant, who has deposed as PW-2. The complainant has categorically stated before the police that the respondent used to threaten and torture the deceased, by saying that she should go away and die, so that he could marry another woman who would bring more money and dowry. The Trial Court has misread the evidence and considered it as a denial whereas in fact, the complainant has affirmed what he has stated before the police. This shows that the respondent was coercing and abetting the suicide of the deceased.

4.1. In support of his submissions regarding the evidentiary value of the testimonies of hostile witnesses, learned Additional Public Prosecutor has relied upon the following judgments:

(1) Mrinal Das and Others Vs. The State of Tripura, and

(2) Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat,

4.2. On the strength of the above submissions, learned Additional Public Prosecutor has prayed that the judgment and order of the Trial Court be quashed

and set aside and the appeal allowed.

5. On the other hand, Mr. H.B. Raval, learned advocate for the respondent has submitted that there is no conclusive evidence to show that the deceased died within a period of 7 years of marriage. The complainant has stated that she was married about 7 years before the incident, whereas the mother of the deceased states that she was married 8 years before she died. The brother of the deceased also states that the deceased was married about 8 to 10 years before the incident. In the face of such contradictions, no presumption can be raised u/s 113A of the Evidence Act, against the respondent. It is further submitted that the deceased was at her parents' house at the relevant point of time. It is not the case of the prosecution that any incident had taken place in proximity to her death that has weighed on the mind of the deceased. In fact, the deceased wanted to go to the house of her mother-in-law and had left the house of the complainant for that purpose. It is only when she did not return at night that the complainant started searching for her, and learnt that the dead bodies of a woman and child had been found, which turned out to be those of the deceased and her son. It is submitted that the complainant has not stated in his complaint and nor has he deposed before the Court regarding any specific incident of harassment, cruelty or abetment to commit suicide. The allegations made by him are of a general nature. It is further submitted that the complainant has specifically deposed that he is illiterate and that some parts of the complaint have been recorded as stated by him, but other parts have been added by the police on their own.

5.1. Referring to the evidence of PW-3, Fatimaben, mother of the deceased, it is submitted by Mr. Raval that she has deposed that the respondent and the deceased used to stay peacefully together. Similarly, PW-5, brother of the deceased has stated that the respondent was in the habit of consuming liquor. Apart from that, no incident of cruelty has been disclosed by him.

5.2. Learned counsel for the respondent has placed reliance upon the following judgments, in support of his submissions:

- (1) Gangula Mohan Reddy Vs. State of Andhra Pradesh, ;
- (2) Rohtash Vs. State of Haryana, ;
- (3) N.D. Nanjappa v. State of Karnataka, reported in (2009) 3 SCC (Cri.) 262 and lastly
- (4) Gopal Vs. State of Rajasthan,

5.3. Lastly, it is submitted on behalf of the respondent that the judgment and order of the Trial Court does not suffer from any illegality or perversity. As per the settled position of law, if there is a possibility of two views on the basis of the evidence, the Court may adopt the view favourable to the accused. On the above grounds, it is prayed that the appeal be dismissed.

6. I have heard learned counsel for the respective parties and perused the original Record and Proceedings, minutely.

7. The Trial Court has recorded a finding to the effect that it is doubtful whether the accused died a suicidal death by jumping into the Aaji Dam, as there was no evidence to this effect. There is no further elaboration in support of this finding. Apart from the submissions in this regard advanced by the defence before the Trial Court, it does not appear that any investigation has taken place in this regard. The fact remains that the dead bodies of Nasimbanu and her son Mohsin, were fished out of the Aaji Dam. The deceased had left the house of the complainant on the pretext that she was going to the house of her mother-in-law. There is no material on record to indicate that the deceased went to the Aaji Dam with her son for any other purpose or that an accident occurred at that place. However, no conclusive finding to the effect that the deceased died an accidental death and has not committed suicide, has been recorded by the Trial Court. At this stage, it would be expedient to leave it at that, as any further discussion in this regard would not serve any fruitful purpose. It would be more relevant to proceed with the reappraisal of evidence in respect of the charges levelled against the respondent.

7.1. To this end, it would be necessary to briefly summarize the salient features of the evidence of the prosecution witnesses.

8. PW-2, Umarbhai Nanubhai is the complainant and the father of the deceased, who has been examined at Exh. 15. He states that his daughter Nasimbanu was married to the respondent about 7 years before the incident. He further states that the respondent and his daughter had come to live in front of his house at Rajkot about two and half years ago and that the respondent used to harass the deceased by frequently beating her. He further states that the respondent used to do the business of selling clothes. He further states that due to harassment and torture inflicted by the respondent, his daughter used to come to his house for 15 days to a month. Whenever his daughter came, she used to tell the complainant that the respondent was harassing her after consuming liquor. This witness further states that after the marriage of his daughter, he frequently sent food grains and other necessities to her house. On the day of the incident, at about 8:00 AM, the deceased was at his house and had told him that she was going to meet her mother-in-law, in order to tell her that the respondent beats her after consuming liquor. The deceased and her son left the house but did not return till 9:00 PM. The complainant started searching for them, but they could not be found. Thereafter, he was informed that the dead bodies of the woman and a child were found from the Aaji Dam. The complainant identified the bodies as being those of his daughter and grandson.

8.1. For some reason, this witness has been declared hostile.

8.2. In his cross-examination, this witness denies the suggestion that the respondent did not torture and beat the deceased. He also denies the suggestion

that he has not stated before the police that the respondent told the deceased to die by hanging herself, so that he could marry another woman who would bring more money and dowry. Further in his cross-examination, this witness states that he is illiterate and certain portions of the complaint are as per his statement but the rest is written by the police, on their own. He categorically states that the complaint, as whole, is not as per his statement but some portions of it are factual. He further states that he has made the complaint four days after the incident.

9. PW-3, Fatimaben Mahmadbhai is the mother of the deceased and has been examined at Exh. 16. This witness states that the respondent used to come home after consuming liquor and there used to be quarrels between the respondent and the deceased. On the day of the incident, the deceased was at her house and had left the house by stating that she was going to her mother-in-law's house. She came to know that the deceased jumped into the Aaji Dam with her son. This witness has also been declared hostile.

9.1 In cross-examination, she has stated that the police has not taken any statement from her. She denies that she has stated that the respondent was not doing any work and she used to provide food grains to the deceased but in spite of this the respondent continued to torture the deceased. She states that she does not remember having stated that the respondent used to torture the deceased and used to tell her to die so "that he could marry a woman who would bring more money and dowry, and it was due to this that the deceased had jumped into the Aaji Dam. Further in cross-examination, this witness states that the deceased and the respondent used to live peacefully together, though she admits that the respondent used to consume liquor. She denies that the deceased did not face any harassment from the respondent.

10. PW-4, Ashrafbhai Abbasi, a neighbour of the complainant, has been examined at Exh. 17. He states that the respondent used to stay opposite his house and never used to do any work. He further states that the respondent used to create scenes after consuming liquor and used to quarrel with, and beat the deceased. He tried to reason with the respondent, after which the respondent used to live peacefully for some time; but thereafter he would create scenes after consuming liquor. This witness has been declared hostile by the prosecution.

10.1. In his cross-examination by the prosecution, this witness has affirmed that he has stated to the police that the deceased was subjected to torture and harassment and that the respondent threatened the deceased and told her to die, so that he could marry a woman who would bring dowry. In the same breath this witness, in his cross-examination by the defence, denies that he has ever stated before the police that the respondent used to harass and beat the deceased and used to tell her that she should go and die, so that he could marry another woman who would bring more money and dowry, which was the reason for the suicide of the deceased.

11. PW-5 is Asraf Umarbhai, brother of the deceased. His deposition is at Exh. 18. He states that his sister had been married to the respondent about 8 years ago and they had come to live at Rajkot from Thorala, about two and a half years ago. He further states that the relationship between the deceased and the respondent was good and they used to live peacefully together. He states that the respondent was in the habit of consuming liquor and under the influence of liquor, he used to create scenes and quarrel with the deceased to give him money for liquor. He further states that the respondent used to do the business of selling clothes. On the day of the incident, his deceased sister had stated that she wanted to go to the house of her mother-in-law and had left his house along with her son. She did not return till about 9:00 PM. On the next day, the dead bodies of his deceased sister and her son were recovered from the Aaji Dam. This witness has been declared hostile by the prosecution.

11.1. In cross-examination, this witness denies having stated before the police that the respondent used to beat and torture the deceased or that the respondent did not do any work and was provided with food grains by them. He further denies having stated that the deceased used to frequently come to their house and they used to send her back. In short, this witness denies his statements made to the police.

11.2. In cross-examination on behalf of the defence, this witness categorically states that it is true that the respondent and deceased got along well together. Only when the deceased consumed liquor was there a problem. He further states that the deceased did not face any other problem from the respondent. He denies that he has given any statement to the police.

12. PW-6 is Osmanbhai Hasambhai, a relative of the complainant, who has been examined at Exh. 19. According to this witness, the deceased was married to the respondent about 8 to 10 years before the incident. He states that the respondent used to harass the deceased after consuming liquor. He also used to beat her and throw her out of the house. The deceased used to ask her father for financial help as the respondent never gave her money. He states that the deceased committed suicide with her son due to the harassment meted out to her by the respondent. In his cross-examination on behalf of the defence, this witness states that apart from the fact that the respondent used to consume liquor, he lived properly with the deceased. He further states that the complainant used to talk to him regarding the events that transpired in the house of the deceased and the respondent, but he has no personal knowledge of the same. He states that he does not have any personal knowledge how the respondent and deceased lived together as he had never gone to their house. He reiterates that the deceased used to consume liquor but states that he does not know whether the deceased faced any harassment due to this.

13. PW-7, Kesribhai Mahmadbhai is a neighbour of the complainant and has been examined at Exh. 20. He states that the complainant had come to his house twice and had told him that his daughter had a problem as the respondent used

to harass her after consuming liquor. This witness states that he is a social worker and had accompanied the complainant to the Police Station when he had gone to file the complaint. In cross-examination, he states that he has no personal knowledge except what the complainant has told him regarding how the respondent used to live with the deceased and why the deceased had committed suicide.

14. PW-8 is a Superintendent in the Fire Brigade Department. He had gone to the Aaji Dam pursuant to the Vardhi received by him and had retrieved the dead bodies of the deceased and her son from the dam.

15. PW-9, Gulabbhai Aamadbhai is the landlord of the deceased and the respondent. His deposition is at Exh. 22. He states that the respondent and the deceased were tenants in his house. They lived peacefully together, though there were small disputes sometimes. The respondent used to do the business of selling clothes. He further states that the respondent used to consume liquor and beat the deceased and inflict mental and physical torture on her. This witness has also been declared hostile, for some reason.

15.1. In cross-examination, this witness has affirmed his statement before the police that the respondent used to harass the deceased and she used to go to her parents' house because of this. He further states that it is not true that he has stated before the police that the respondent used to say that the deceased should die after sprinkling kerosene upon herself so that the respondent could marry another woman who would bring more money and dowry. Further in cross-examination, this witness states that the respondent and deceased stayed in his house for about 3 months and during that period there were quarrels between them but no torture was inflicted upon the deceased. He further states that there were problems after the respondent consumed liquor. He further states that the respondent used to do business and earn a livelihood.

16. PW-10 is Balubha Dolatsinh Jadeja, Assistant Sub Inspector, who had gone to the Aaji Dam, pursuant to an order from the Police Station Officer and had prepared the inquest Panchnama at Exh. 25. Nothing much turns on the deposition of this witness.

17. PW-11 is Ghanshyamsinh Lalubha, Head Constable, who had made an entry in the Station Diary after he sent the complaint for registration.

18. PW-12 is Fatesinh Nathusinh, Investigating Officer, who has been examined at Exh. 28. He narrates in detail the procedure adopted by him and the statements of the prosecution witnesses recorded by him, and the extent to which they differ from their depositions before the Court.

19. The above, in totality, is the evidence adduced by the prosecution.

20. Learned Additional Public Prosecutor has submitted that even though certain prosecution witnesses have been declared hostile, their evidence cannot be thrown out in totality and that portion of the evidence which is in conformity with

the case of the prosecution can be relied upon.

21. In the case of *Mrinal Das and Others Vs. The State of Tripura*, , the Supreme Court has reiterated the settled position of law, that the evidence of hostile witness need not be rejected in its entirety but may be relied on for corroboration. This is what the Supreme Court has held in this regard:

67. It is settled law that corroborated part of evidence of hostile witnesses regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en block the evidence of the witness. However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

22. In the case of *Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat*, , the Supreme Court has held as below:

16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in to merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide *Bhagwan Singh Vs. The State of Haryana*, , *Shri Rabindra Kumar Dey Vs. State of Orissa*, , *Syad Akbar Vs. State of Karnataka*, and *Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh*, .

17. In *State of U.P. Vs. Ramesh Prasad Misra and another*, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde Vs. State of Maharashtra*, , *Gagan Kanojia and Another Vs. State of Punjab*, , *R Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P.*, , *Sarvesh Narain Shukla Vs. Daroga Singh and Others*, and *Subbu Singh Vs. State by Public Prosecutor*, .

18. In *C. Muniappan and Others Vs. State of Tamil Nadu*, this Court, after considering all the earlier decisions on this point, summarised the law applicable

to the case of hostile witnesses as under: (SCC pp. 596-97, paras 83-85)

83....the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the Courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWS have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sitting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide Sohrab and Another Vs. The State of Madhya Pradesh, , State of U.P. Vs. M.K. Anthony, , Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , State of Rajasthan Vs. Om Prakash, , Prithu @ Prithi Chand and Another Vs. State of H.P., , State of U.P. Vs. Santosh Kumar, and State rep. by Inspector of Police Vs. Saravanan and Another, .

23. In light of the above settled principles of law, it transpires that the evidence of PW-2, father of the deceased, PW-3, mother of the deceased, PW-5, brother of the deceased and PW-9, landlord of the deceased and respondent, cannot be rejected en block. However, at the same time, it has to be carefully and cautiously sifted, in order to separate the truth from untruth, exaggeration and improvements. Only thereafter can a conclusion be arrived at whether, and to what extent, the evidence can be relied upon and whether what remains of it would be sufficient to convict the accused.

24. PW-2, father of the deceased, states that his daughter was married about 7 years before the incident. In contradiction, PW-5, the brother of the deceased, states that his sister was married 8 to 10 years before the incident. There is no conformity between these prosecution witnesses who are closely related to the deceased, even regarding the time span of the marriage of the deceased to the respondent. From the above, no presumption u/s 113A of the Evidence Act can be raised against the respondent and the Trial Court has rightly not raised such a presumption.

25. PW-2, father of the deceased, states that the deceased was being harassed

by the respondent, who used to beat and torture her after consuming liquor, whereas PW-3, mother of the deceased, states that the deceased and the respondent used to live peacefully together but the respondent was in the habit of consuming liquor.

26. PW-4, neighbour of the deceased, in his cross-examination states that the respondent used to consume liquor and did not do any work. He further states that there were frequent quarrels between the deceased and the respondent, and the respondent used to beat her. This witness has also been declared hostile. Further in cross-examination, this witness denies having stated before the police that the respondent used to harass and beat the deceased after consuming liquor and that the deceased had committed suicide due to this.

27. PW-5, Asraf Umarbhai is the brother of the deceased. He categorically states that the relationship between the deceased and the respondent was good. He further states that the respondent used to consume liquor and create scenes thereafter and that the respondent used to ask the deceased for money which led to quarrels. He further states that the respondent was earning a living by selling clothes. In his cross-examination, he denies the statements allegedly attributed to him by the police. He further states in cross-examination on behalf of the defence that his deceased sister and respondent had a good relationship and the problem only arose when the respondent consumed liquor. The deceased had no other problem as the respondent used to earn a livelihood and buy all essential necessities for the house.

28. If the evidence of the above prosecution witnesses, even though declared hostile, is shifted and examined carefully, it appears that the only consistent theme that runs in their evidence is that the respondent was in the habit of consuming liquor and creating scenes thereafter. However, as seen from the evidence, there is no consistency inter se or otherwise, in the testimonies of these prosecution witnesses in regard to other aspects. The evidence of the complainant that the respondent tortured the deceased and treated with her cruelty is belied by the evidence of PW-2 and PW-5. Therefore, it cannot be stated with certainty that there is material on record to conclusively prove that the respondent tortured and harassed the deceased or drove her to commit suicide.

29. As held by the Supreme Court in the above quoted judgments, the testimonies of witnesses who make different statements at different times, having no regard for the truth, cannot be relied on. What emerges after discarding the exaggerations, improvements, inconsistencies and contradictions in the depositions of the above prosecution witnesses, is only that the respondent habitually consumed liquor and quarrelled with the deceased under the influence of liquor. Whether that, in itself, can be taken to be "cruelty" within the meaning of Section 498A of the Indian Penal Code, is a question that would have to be answered in the negative.

30. In the case of State of Gujarat Vs. Bharatbhai Balubhai Lad and Others, , a Division Bench of this Court has held as below:

17. This court in case of Indrasing M. Raol Vs. State of Gujarat, has explained the concept of cruelty within the meaning of the definition as provided u/s 498-A of IPC. The ratio of this decision is that every act of cruelty or harassment is not made a crime u/s 498-A. The prosecution has to establish that the cruelty or harassment was unabatted, incessant and persistent and being grave in nature unbearable and the same was with the intention to force the woman to commit suicide or to fulfil illegal demand or dowry of the husband or her in-laws. As held by this Court, Section 498-A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands or her husband or in-laws, and was not matrimonial cruelty, namely, usual wear and tear of matrimonial life.

(emphasis supplied)

31. As held by the Division Bench, the prosecution has to establish that the cruelty or harassment was unabatted, incessant, persistent and grave in nature unbearable and with an intention to force to commit suicide or fulfill an illegal demand for dowry by the husband or in-laws. The prosecution is further obliged to establish a reasonable nexus between the cruelty and the suicide.

32. If the evidence on record in the present case is examined in light of the above principles of law, it emerges that the prosecution has been unsuccessful in establishing that the respondent inflicted incessant, persistent cruelty or harassment upon the deceased with an intention that she commits suicide. Apart from his habit of consuming liquor and creating scenes thereafter, there is no evidence on record to prove that there was cruelty within the meaning of Section 498A on the part of the respondent to the deceased. Not a single instance of cruelty has been narrated by any of the witnesses.

33. Insofar as the charge u/s 306 is concerned, the definition of abetment u/s 107 of the Code, would be relevant.

34. In the case of Ramesh Kumar Vs. State of Chhattisgarh, , a three Judge Bench of the Supreme Court had an occasion to deal with a case of a similar nature and has succinctly observed as below:

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out, the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was

left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

(emphasis supplied)

35. Seen in the light of the above lucid definition, it transpires that abetment would require instigation or incitement to do a particular act, namely, commit suicide. The instigation would have to be of a persistent and/continued nature. A word uttered in a fit of anger without intending the consequences to actually follow, cannot be said to be instigation.

36. In the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, , the Supreme Court has held as below:

17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person u/s 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

(emphasis supplied)

37. Further, in the case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , the Supreme Court has held that the presence of mens rea is a necessary concomitant of instigation. The words uttered during a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. In that case, the appellant therein had used abusive language and also told the deceased to "go and die". However, the Supreme Court has held that the words uttered in a quarrel or on the spur of the moment to "go and die" cannot be said to have been uttered with mens rea.

38. This judgment would assume relevance in the present case, as it is the case of the prosecution that the respondent had told the deceased that she should go and hang herself, so that he could bring another woman who gives him more dowry and money. This has been stated by the complainant, who has deposed as PW-2. In contradiction to this, PW-9 the landlord of the deceased and the respondent, has reiterated that he has stated before the police that the respondent had told the deceased to go and sprinkle kerosene upon herself and die so that he could marry another woman who would bring more dowry. It has not been stated either by PW-2, father of the deceased or PW-9, how they have come to know that the respondent had uttered these words. It is not stated by these witnesses that the deceased had told them this. They do not appear to have any personal knowledge regarding this aspect. Not only that, there is a basic contradiction between both the versions, as PW-2 says that the respondent

told the deceased to hang herself whereas PW-9 states that he told her to sprinkle kerosene on herself, and die.

39. In any event, even if it is assumed that the respondent had uttered these words, however, in view of the principles of law enunciated by the Supreme Court in the case of Sanju Alia Sanjay Singh Sengar v. State of M.P. (Supra), it cannot be taken to mean that the respondent had uttered these words with an intention or mens rea, to drive the deceased to commit suicide. It is the case of the prosecution that the respondent was in the habit of consuming liquor. Even if it is assumed that the respondent uttered these words in a drunken state, it cannot be established that he had the necessary mens rea to intend the death of the deceased.

40. As a necessary corollary of the above discussion and as a result of reappraisal and evaluation of the evidence on record, this Court finds itself in agreement with the conclusion and findings arrived at by the Trial Court, to the effect that it has not been proved beyond reasonable doubt that the deceased has committed suicide as a result of the cruelty inflicted upon her by the respondent, or that the respondent had actively abetted her suicide.

41. In the case of Rohtash Vs. State of Haryana, , the Supreme Court has reiterated the settled legal principles regarding the scope of interference of the High Court in an Appeal against the acquittal, in the following terms:

27. The High Court interfered with the order of acquittal recorded by the trial Court. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the 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 innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide State of Rajasthan Vs. Talevar and Another, and Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, .

42. In the present case, there are no compelling circumstances to persuade this Court to interfere with the judgment and order of acquittal rendered by the Trial Court.

43. For the aforesaid reasons, the appeal must fail. The appeal is, therefore, dismissed.