

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.A No.22 of 2010

The State of Tripura

..... **Appellant**

- V e r s u s -

Sri Jhutan Das,
son of Sri Ranjit Das, resident
of Tebaria (Khasiamura), P.S.
Lefunga, District - West
Tripura

..... **Respondent**

**BEFORE
THE HON'BLE MR. JUSTICE U.B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant : Ms. P. Dhar, Advocate.

For the respondent : Mr. D.C. Roy, Advocate

Date of hearing : 29.07.2015

Date of delivery of
Judgment & Order : **16.10.2015**

Whether fit for reporting:

YES	NO
✓	

JUDGMENT & ORDER

(S. Talapatra, J)

This is an appeal by the State under Section 378 of the Cr.P.C. against the judgment and order of acquittal dated 27.04.2009 delivered in ST 72 (WT/A) of 2007 acquitting the respondent from the liability of charge framed under Sections 498-A and 302 of the Indian Penal Code.

[2] The investigation commenced based on a written ejahar filed on 29.04.2005 by Sri Sukumar Das (PW-1) disclosing that the marriage of his daughter namely, Sikha Das was solemnized on 02.03.2005 with the respondent-accused person namely, Sri Jhutan Das. After 8-10 days of the marriage, the accused person started mental and physical torture by calling her 'evil'. Even the accused person complained to PW-1 that his daughter was unable to do any household work. It has been further revealed that his daughter was forced to sleep on the floor. On 19.04.2005, his daughter felt stomach pain at about 10-10.30 at night. The accused person gave some medicine to his daughter advising that the medicine had to be taken in the darkness. His daughter, now deceased consumed half bottle of the medicine and she started having burning sensation in her throat. She told her husband that she would not be able to take the rest of the medicine. On the following morning, his daughter started vomiting after short intervals. The accused person in the next afternoon informed a neighbour of the informant over telephone that the victim, the deceased daughter of PW-1 was vomiting continuously. On the next day, the informant's younger son, Sudip went to see his daughter and requested the victim's father-in-law and mother-in-law to take her to a Doctor. On the following day, the informant and his daughter, Rikha went to see his daughter and on going there, they saw that her condition was critical. Again they requested the victim's in laws to take her to a Doctor. The

victim was taken to a Doctor and finally, she was admitted in the Narsingarh hospital. After remaining admitted for 3 days there, the victim's condition improved slightly and she was discharged and brought to the informant's house. But on the next day, her condition started deteriorating. She was taken to Dr. Pramatesh Roy at Agartala as she could not eat anything and some pieces of flesh from the throat were flushing out. She became almost speechless. On 28.04.2005, the accused person also visited his daughter. At the intervention of one Dilip Bardhan of the village of the informant, the accused person stated that he had given medicine that is used to destroy weeds in the tea garden. The moment Dilip informed it, the informant rushed to the GBP hospital with the victim and informed the Doctor about that incident. When the written ejahar was filed, the victim was being treated in the GBP hospital in a critical condition.

[3] Based on the said written ejahar (Exbt.1), Lefunga Police Station Case No.10 of 2005 under Sections 498-A & 326 of the I.P.C was registered and taken up for investigation. On 13.05.2005 the victim succumbed in the GBP hospital. With the leave of the Magistrate, the investigation started under Section 302 of the I.P.C. The chargesheet was filed by the police against the accused person under Sections 498-A, 326 and 302 of the I.P.C. The charge was framed however, under Section 498-A of

the I.P.C. and Section 302 of the I.P.C. but the accused person pleaded not guilty and claimed to face the trial.

[4] In order to substantiate the charge as many as 28(twenty eight) witnesses were examined and 23 documentary evidence (Exbts.1 to 23) including the forensic examination report, injury report, bed head ticket and the postmortem examination report were introduced in the evidence. After the prosecution evidence was recorded, the accused person was examined under Section 313 of the Cr.P.C.

[5] Thereafter, on appreciation of the evidence the accused person has been acquitted from the charge by the impugned judgment and order 27.04.2009 on observing that:

"16. The alleged extra judicial confession given to Haralal Debnath and Dilip Bardhan, P.W.4 and P.W.2 respectively has to be considered along with the dying declaration of Sikha. In fact, the incriminating circumstance against the accused person cropped up on the basis of alleged extra judicial confession by the accused person to P.W.2 and P.W.4 that in the night of 19.04.2005 when Sikha had been ailing, the accused person administered insecticides to Sikha and since then her condition deteriorated.

17. The basic foundation of a confessional statement whether judicial or extra judicial is that, it must be voluntary and free from any inducement, threat. Admittedly, Jhutan went to his in-laws house wherein his wife had been ailing and P.W.2 and 4 started persuading him to disclose the name of medicine which he administered on Sikha in the night of 19.04.2005. Allegedly at that point of time, the accused person gave the confessional statement that he administered poison Sikha in the night of 19.04.2005. Thus, Sikha was again taken to G.B. Hospital, Agartala on 30.04.2005 and on that day itself FIR was lodged. Thus, the alleged extra judicial confession is not voluntary and cannot be accepted in evidence."

[6] In the midst of hearing, Ms. P. Dhar, learned counsel appearing for the appellant having referred to certain scientific studies namely, Index of Signs and Symptoms of Acute Poisoning and Outcome of Paraquat Poisoning of Five years study has submitted that from the medical records and the physical description of the symptoms, it is apparent that the victim was administered Paraquat. Paraquat is a known poison, widely used primarily in agriculture for control of weeds. Having regard to that aspect of the matter, this Court by the order dated 25.02.2015 directed the Head of the Department, Medicine of Agartala Medical College and Hospital to appear as the expert witness in this Court. The Registry was directed to issue the summons after collecting the name of the head of the department of Medicine from that medical college. The Registry after taking information had issued the summons to Prof. Beenapani Doley, the head of the department of Medicine, AGMC & GBP hospital and as per the order, the following records were supplied with the summons for pre-appearance study:

- “(i) Exbt.10, prescription**
- (ii) Exbt.11, death certificate**
- (iii) Exbt.17, forensic examination report,**
- (iv) Exbt.20, injury report**
- (v) Exbt.21 series, bed head tickets**
- (vi) Exbt.22 series, bed head tickets**
- (vii) Exbt.23, medical report and**
- (viii) Exbt.15, postmortem examination report along with the scientific papers namely, the Index of Sign and Symptoms of**

Acute Poisoning. The copy of the chapter-XII of Paraquat and Diquat-Recognition and Management of Pesticides poisoning a case study namely, two cases of Paraquat poisoning from Himachal Pradesh and outcome of Paraquat poisoning a five years study with the copy of the order dated 25.02.2015."

Accordingly, Prof. Doley appeared in the court as the additional prosecution witness No.1 and she has stated as under:

"I have gone through the documents that have been supplied to me. On examining Exhibits 10,20, 21 and 22 and also from my own search in the records maintained in the AGMC & GBP Hospital, I state that the patient was treated for consuming some kind of acidic substance. The documents available with the department show that she had been having difficulty in swallowing. The observation in Exhibit 22 that the patient was suffering from Glossitis, according to me, was caused from the swallowing of some acidic substances. The symptoms of Glossitis did not figure in the subsequent stages of treatment.

Having referred to the Dysphagia and Mucocytis, I state that the patient at that time also had Ulcer of tongue on the date of admission and was unable to talk properly and she was having difficulty in swallowing with burning sensation. On discharge she was better.

According to the postmortem report, exhibit 15, under the column ante mortem injuries, it appears from the findings that the Ulcer was in the process of healing.

As per the postmortem report, cause of death, as has been recorded, occurred due to Meningitis. There are several types of Meningitis and from the records it appears to me that the Meningitis was Bacterial Meningitis.

On 4th May, 2005, the patient was discharged on request. Before discharge, ECG was done and it was found that the cardiac status of the patient was normal. However, the patient was advised to consult ENT specialist.

It is possible that the patient was suffering from Fever and Meningitis on subsequent (2nd) Hospitalization and some findings could be possible from previous corrosive ingestion.

Witness Volunteers : Meningitis cannot be for Paraquat Poisoning.

Cross examination by Mr. D.C. Roy, learned counsel for the Accused:

I have not treated the patient and as such I don't have any personal experience of the patient.

[7] Ms. P. Dhar, learned counsel appearing for the appellant-State has emphatically submitted that from the symptoms as registered in the medical records, it would be apparently clear that the so called medicine that was administered by the accused person was nothing but a poison in the group of Paraquat. She has at the outset referred to the medical report of the deceased prepared by the Medical Officer, ICU Ward, GBP hospital on 09.08.2005, Exbt.23 where the following has been observed:

"On 29.04.2005, the case was attended by a team of doctors of FM-II Ward including Head of the Department, Medicine and found that she had an ulcer in tongue with h/o (history of) ingestion of corrosive acidic materials, 11 days back, served by her husband. Clinically she was stable excepting ulcer tongue and subsequently she was referred to ENT specialist."

ENT specialist had seen the case on 30.04.2005 and reviewed on 02.05.2005 and had given necessary instruction. On 13.05.2005, she became unconscious and clinically further deteriorated and she expired at 8 pm on 13.05.2005. Her dead body was sent for PM Examination as per demand of Sri Sailen Das, brother of late Shikha Das."

She has further referred to the injury report dated 30.05.2005 as issued by the Medical Officer-in-Charge, Narsingarh P.H.C. where the victim attended first on the OPD on 23.04.2005 with burning sensation of mouth and difficulty in swallowing. In the said report, Exbt.20, it has been observed as under:

"Subsequently Pt was admitted on 24.04.2005 at 10.30 pm with H/O ulceration mouth, difficulty in swallowing and epigastria burning sensation and with loose motion. During admission & hospital stay ulcer around throat observed and posterior tongue observed with dehydration. Pt was

discharged on 27.04.2005 around 12 noon after improvement of ulcer mouth and loose motion with advices."

[8] Ms. Dhar, learned counsel has also referred to the bed head tickets of the GBP hospital to refer the clinical history of ulcer and symptoms of inability to talk properly. There is a note in the bed head ticket by the attending doctor as follows:

"This case is admitted with history of indigestion of unknown liquid (Acid) 11 days back ulcer of tongue and mouth and difficult in swallowing. No medical problem at present.

You are requested to see the case and do the needful for favour of transfer to your side for appropriate management."

[9] Ms. Dhar, learned counsel has submitted that there is a clear mention in the bed head tickets that the glottis was poor and at some times, the victim was suffering from Enteric fever. She has also referred to the oral testimonies of Dr. Dipankar Ghosh (PW-20) who had treated the victim on 30.04.2005 and recorded one statement of the victim (Exbt.16) in presence of Dr. Sukumar Das and Dr. Pankaj Kr. Deb (PW-28). The said statement also bears the certificate of PW-20 regarding the condition of the victim. The said doctor denied the suggestion that the victim was not in a position to give such statement or that he did not attend the victim on the relevant date in the cross-examination. The statement as recorded by the Doctor is as under:

"On 19.04.05 at 12.05 midnight my husband served me a liquid to drink telling that it is a medicine for pain in abdomen. After drinking that I felt burning sensation in the mouth, neck, chest and abdomen. I had continued vomiting 2 (two) days. I was hospitalized at Narsingarh PHC first

and then at GBP hospital on 19.04.2005 at 7.10 am."

[10] Ms. Dhar, learned counsel has also relied in this regard on the testimony of PW-27, Dr. Milan Kanti Saha and PW-28, Dr. Pankaj Kr. Deb. Dr. Milan Kanti Saha, PW-27 was the in charge Medical Officer of Narsingarh PHC. On the basis of Exbt.20, PW-27 has stated that:

"On 23.04.2005 at 9.30 am I attended Smt. Sikha Das, a Hindu female aged about 24 years, wife of Sri Jhutan Das of village – Narayanpur, Airport P.S. and she complained pain over left arm, left calf and on right supra orbital area (above the eye brow). She also complained that she was suffering from burning sensation in her mouth and difficulty in swallowing.

Accordingly, I examined her in the Outdoor of that Primary Health Centre and during examination, I found as follows:

1. Haematoma over left arm measuring 2" X 2" X ½".
2. Haematoma over left calf measuring 2" X 2" X ½".
3. The orbital region of the right eye was found black.
4. Tenderness over right supra orbital area.

I discharged the said patient Sikha Das with advise and on that day I also informed the said fact to Airport P.S. over telephone as the patient informed me that she was assaulted 3/4 days back.

All the injuries were simple in nature and caused by blunt object. All the injuries were old more than 24 hours.

On 24.04.2005 said Sikha Das was admitted in that PHC at 10-30 p.m. with the history of ulceration of mouth, difficulty in swallowing and epigastric burning sensation with loose motion. Accordingly, after admission I treated her. I found ulcer around her throat and posterior tongue. She was also suffering from Dehydration. She was given treatment with medicine in the PHC. On 27.04.2005 about 12 noon she was discharged after improvement of ulcer of her mouth and loose motion with advise."

[11] Dr. Pankaj Kr. Deb, PW-28 according to Ms. Dhar, learned counsel has also given the history of injury and the

treatment. He identified the bed head tickets, Ebt.21 series and the report dated 09.08.2005 (Exbt.23), prepared by him. Ms. Dhar, learned counsel has further submitted that by the seizure list, Exbt.6 one glass bottle containing liquid material was seized behind the stand used for keeping the dress materials being discovered and identified by the accused in presence of other witnesses namely, Sumangal Das and Chittaranjan Das on 29.04.2005. The accused has also signed over that seizure list (signature of the accused is Exbt.6/1). The said bottle which was seized from the room of the accused was sent for the forensic examination, Exbt.17 which was marked by the forensic laboratory as 581/ B containing 10 ml. big green coloured liquid, suspected poison. The result of the examination is as follows:

"No common poison could be detected in the contents of each of the exhibits marked here as 581/1, 581/2, 581/3, 581/4 respectively."

According to Ms. Dhar, learned counsel appearing for the appellant the statement made by the accused to Dilip Bardhan (PW-2) that the deceased told him that the accused gave her a liquid in a glass and after consuming that she suffered from acute burning sensation in her throat. One Haralal Debnath talked to the accused separately when the accused told him that he did not give any medicine to his wife but on the following day when PW-2 asked the accused to reveal the name of the medicine, in order to save the life of his wife, then the accused told him in presence of Haralal Debnath that he gave poison which is used in tea gardens

for destruction of weed. Haralal Debnath was examined as PW-4 and he corroborated that the accused told to Dilip Bardhan, PW-2 in his presence that he gave the medicine which is used for destroying the weeds. Ms. Dhar, learned counsel contended that such voluntary revelation made by the accused cannot be treated as a statement derived involuntarily as observed by the trial court. Ms. Dhar, learned counsel though has admitted that the cause of death as recorded in the postmortem examination as conducted by Dr. Pranab Choudhury, PW-13 is Meningitis but it cannot exonerate the accused from the offence that he committed by administering the Paraquat poison to his wife and as such, the impugned judgment and order of acquittal is required to be interfered with for substantial ends of justice.

[12] Ms. Dhar, learned counsel to support her contention in respect of interference by the appellate court in the judgment and order of acquittal has referred the decision of the apex court in **State of Maharashtra vs. Kashirao and others**, reported in **(2003) 10 SCC 434** where the apex court has enunciated that when two views are possible and if one view has been adopted by the court to either acquit the accused or to apply a different provisions of law, interference should not be made but when the judgment suffers from legal infirmities or on application of legal position to the factual scenario is unsustainable, inference is not only necessary but also highly desirable. Ms. Dhar, learned

counsel has referred another decision of the apex court in **Sandip Vs. State of U.P.**, reported in **(2012) 6 SCC 107**, where the apex court has held as under:

"49. As against the said submission, Mr. Ratnakar Dash, learned Senior Counsel appearing for the State rightly pointed out that Section 25 of the Evidence Act can be pressed into service only insofar as it related to such of the statements that would implicate the accused himself while the other part of the statement not relating to the crime would be covered by Section 8 of the Evidence Act and that a distinction can always be drawn in the statement of the accused by carefully sifting the said statement in order to identify the admission part of it as against the confession part of it."

Sandip Vs. State of U.P. has been referred in the context of the accused person's discovery and identification of the bottle of the liquid which had been seized from his room. Ms. Dhar, learned counsel has also referred the apex court decision in **Chattar Singh and Another vs. State of Haryana**, reported in **(2008) 14 SCC 667** in respect of voluntariness in the extra judicial confession. The apex court has held as under:

"20. '18. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (for short the 'Code') or a Magistrate so empowered but receiving the confession at a stage when Section 164 of the Code does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any

inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. [See R. v. Warickshall : (1783) 1 Leach 263]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is

treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words 'appear to him' in the last part of the section refer to the mentality of the accused.

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be

accepted and can be the basis of a conviction if it passes the test of credibility.”

[13] From the other side, Mr. D.C. Roy, learned counsel appearing for the accused person, the respondent in this appeal has categorically submitted that there is no infirmity in the impugned judgment and order. The accused person has been implicated after the so called extra-judicial confession made on 29.04.2005 to PWs-2 & 4. Even the victim made her statement on 30.04.2004 to the doctor after such extra-judicial confession. The written ejahar was also filed by PW-1 on 29.04.2005. Even though the victim was all along in the residence of PW-1, she did not reveal anything either to PW-1 or to PW-9 or the villagers. Therefore, by means of fabrication, the accused person has been framed and it is a case of framing by design. The so called extra judicial confession made to PW-2 cannot be stated to be voluntary even if the statement of PW-2 is completely believed. Mr. Roy, learned counsel appearing for the accused person has stated that the accused person has categorically denied that he had ever given any medicine to the victim. Mr. Roy, learned counsel has further submitted that the seizure witnesses in whose presence the bottle containing liquid was purportedly seized by virtue of the seizure list, dated 29.04.2005 (Exbt.6) did not support the prosecution case. PW-7, Sumangal Das and PW-8 Chittaranjan Das were the independent witnesses at the time of seizure. PW-7, Sumangal Das was declared hostile and he was cross-examined.

The similar suit was also followed by PW-8. According to Mr. Roy, learned counsel when the seizure of the bottle containing the liquid has not been established, the forensic report is of no consequence. Mr. Roy, learned counsel has further submitted that even the additional prosecution witness No.1 has given the definite opinion that Meningitis cannot be for Paraquat poisoning. Thus, the charge as brought under Section 498-A or under Section 302 of the I.P.C. must fail for absence of any legal evidence. When a person has been acquitted from the charge the presumption of innocence gets further consolidated and that should not be disturbed unless there is overwhelming evidence showing perversity in appreciation. Mr. Roy, learned counsel has relied on a decision of the apex court in **Vinod Kumar vs. State of Haryana**, reported in **(2015) 3 SCC 138**, where the apex court has enunciated the general principles how to appreciate an appeal against acquittal:

"17. Before we dwell upon the factual score whether the prosecution has proven the case to warrant a conviction, we think it apt to recapitulate the principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal. In this context, reproducing a passage from *Jadunath Singh v. State of U.P* : (1971) 3 SCC 577 would be profitable:

"This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup v. King Emperor* :AIR 1934 PC 227 (2) and *Nur Mohammad v. Emperor* : AIR 1945 PC 151. These two decisions have been consistently referred to in the judgments of this Court as laying

down the true scope of the power of an appellate court in hearing criminal appeals (see *Surajpal Singh v. State* : AIR 1952 SC 52 and *Sanwat Singh v. State of Rajasthan* : AIR 1961 SC 715)."

Similar view has been expressed in *Damodarprasad Chandrikaprasad vs. State of Maharashtra* : (1972) 1 SCC 107, *Shivaji Sahabrao Bobade vs. State of Maharashtra* : (1973) 2 SCC 793, *State of Karnataka vs. K. Gopalakrishna* : (2005) 9 SCC 291, *Anil Kumar vs. State of U.P.* : (2004) 13 SCC 257, *Girja Prasad vs. State of M.P.* : (2007) 7 scc 625 and *S. Ganesan vs. Rama Raghuraman* : (2011) 2 SCC 83.

18. In this regard, we may fruitfully remind ourselves the principles culled out in *Chandrappa v. State of Karnataka*: (2007) 4 SCC 415.

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate 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."

[14] It is to be noted that the evidence as relevant has been referred exhaustively while noting the submission of the learned counsel appearing for the parties. However, this Court would also refer to the testimony of Dr. Pramatesh Roy, PW-26 who examined the victim on 28.04.2005 at his private clinic. He found that the victim was suffering from severe Glotitisitis (infection inside the mouth), hoarseness of voice, severe anemia and her general condition was poor. He did not ever refer to the prescription of the Narsingarh PHC. It is not clear whether the victim produced those medical records or not.

[15] A cursory glance to the testimony of PW-1 and other PWs may be made. PW-1, Sukumar Das filed the written ejahar. He almost replicated the content of that said ejahar with some elaborations. He has reiterated that he got the information of ailment of the victim on 20.04.2005 and he sent his son, Sudip (PW-9) to her daughter's matrimonial home. On 22.04.2005, he himself along with his daughter, Rikha Das went to the matrimonial home of the victim. He has stated that in his presence the accused person told him that he gave medicine to his wife on 19.04.2005. Only on 23.04.2005 he took the victim to Narsingarh PHC. Again on 24.04.2005 he took his daughter to the

said PHC where she was admitted till 27.04.2005. On 28.04.2005 his another son, Sailen Das (PW-22) took the victim to Dr. Pramatesh Roy (PW-26). Despite his asking, the accused person did not tell the name of the medicine. Only on 29.04.2005 at about 7.30 in the morning the accused told to Dilip Bardhan and Haralal Debnath, the co-villager and the tenant in his house respectively, that he gave herbicide to his wife on 19.04.2005 at night. That herbicide is used to kill the weeds. Immediately the victim was shifted to the GBP hospital, Agartala and thereafter, he lodged the written ejahar which was written at his dictation by one Dhruba Acharji (PW-16). There are statements as regard to the assault on the victim, but PW-1 has admitted that those statements he did not reveal in the written ejahar nor did he state in the ejahar that the victim told him that on the night of 19.04.2005 her husband gave her medicine as she was suffering from stomach pain. As such, those statements may not and did not receive the credit from the court.

[16] PW-3, Rikha Das, daughter of the informant has corroborated the statement of PW-1. PW-5, Sri Dilip Kumar Das has stated that on 24.04.2005 when he met Sikha in Narsingarh PHC, the victim told him that she took the medicine as given by her husband few days ago as she was suffering from stomach pain. But when he had asked the accused person to reveal the name of the medicine the accused person told him that he gave

homeopathic medicine to the victim. PW-6 Smt. Subhra Deb (Das), wife of Sailen Das (PW-22), is a close relative of the victim. She has stated that there was demand of money and on that ground the victim was assaulted. The other parts are not very relevant as those were introduced for purpose of elaboration. She was severely confronted and it appears from the cross-examination that most of the statements are improved and the contradictions were recorded by the defence following the prescription of law. PW-9, Sudip Das has stated about the unlawful demand and his visit to the house of the victim on 21.04.2005. He has narrated the story in the manner as done by the other witnesses. But some of his statements have been established to be improved including the statement that the victim told him that her husband gave her medicine in the night of 19.04.2005. PW-10 namely, Chandramohan Das turned hostile and did not support his previous statement as made to the police officer. The same suit was followed by PW-11, Goutam Deb. PW-12, Sri Subrata Sinha, is a witness to seizure of the medical records, namely bed head tickets and the other documents attached to that and he had identified the seizure list by which those documents were seized. PW-13, Dr. Pranab Chowdhury identified the postmortem examination report and stated that the postmortem examination report is the outcome of the autopsy conducted by Dr. Ranjit Kr. Das and himself on the victim. He has

categorically stated that the following external and internal injuries were found:

"Only one old scar mark was present on the right forearm. The age of said injury appeared to be more than 21 days from the date of our examination.

No other external injury was found by us.

On dissection of the dead body, we found the following injuries:

In oral cavity inside the mouth mucosa on both sides were found rough in different places.

On section of that rough portion, we found that there was fibrotic changes, it means that there was infection of more than about 21 days."

According to the forensic examination report, the cause of death was Meningitis. He has categorically stated that the medicine which is used for killing weeds in garden can cause irritation to the mucosa if it contains plenty of irritant substance like alkali, corrosive etc.

[17] PW-14, Nani Kanta Sarkar, a constable of police who transported the dead body of the victim for forensic examination. He is also the seizure witness of the wearing apparels of the deceased. PW-15, Nepal Chandra Ghosh, a head constable of police who is the witness of the seizure of the prescription, Exbt.8. PW-16, Dhruba Acharji is the scribe and he did not state anything of material importance except that he wrote the ejahar having been dictated by PW-1. PW-17, Smt. Karuna Deb had confirmed that the accused person made a telephone call and requested her to call Rikha (PW-3). Rikha was accordingly called. The accused

person informed her about the illness of the victim. PW-18, Sri Tutan Deb did not divulge anything of material importance but stated about his knowledge about the family of PW-1 and death of the victim. PW-19, Hiran Debbarma is a seizure witness. In his presence some documents covered by the seizure list dated 03.12.2005 (Exbt.14) was taken into custody by the investigating officer. The testimony of PW-20, Dr. Dipankar Ghosh has already been exhaustively referred. PW-21, Ramanath Das is the son-in-law of PW-1. He has also stated that the victim told him that the accused person used to assault the victim occasionally. He was informed that the victim was admitted in the GBP hospital. He has revealed some episodes relating to assault but those were not admittedly stated to the investigating officer and accordingly, contradictions were recorded. As a result, the substantial part of the evidence has not been relied by the trial court. PW-22, Sri Sailen Das, is the brother of the victim. He has also given some episodes of assault that he heard from the victim. On 23.04.2005 he gathered the information that the victim has been brought to her father's house and on that day itself, the victim told him that in the night of 19.04.2005 her husband gave her some liquid in a glass as she was suffering from stomach pain. He had also tried to gather the name of the medicine but the accused person did not reveal. He was witness to the inquest and also to the seizure of the wearing apparels of the victim (Exbt.M.O.1 series). Some of his statements were seriously contradicted by the defence based

on the previous statement and that is why those statements did not receive due weightage. PW-23, Partha Sarathi Paul as the Officer-in-Charge recorded the FIR and entrusted the case one Pradip Bhattacharji, a Sub-Inspector of police for investigation. Sri Pradip Bhattacharji, PW-24 has stated briefly how he conducted investigation, recorded the statement of the witnesses and prepared the site map. In his statement in the trial, he has stated that:

"After arrest I interrogated the accused in his house. Thereafter, on being shown by the accused, I seized a bottle from the dwelling hut of the accused. The accused also told me that there was medicine in that bottle which was used for destroying of weeds of tea garden."

He has identified the bottle that he was seized as Exbt. M.O.1. What is apparent from his statement that the defence did not try to prove the contradiction as identified by them during examination of the witnesses.

[18] PW-25, Debasish Banerji, a Sub-Inspector of Police who was posted at the Lefunga P.S. at the relevant point of time has completed the investigation on receipt of the various reports viz. injury report, postmortem examination report, forensic examination report and thereafter, he submitted the charge sheet against the accused person. He did not record any statement of the witnesses.

[19] From appreciation of the evidence on record, the following questions emerge as pertinent for deciding the appeal:

(i) Whether the revelation made by the accused person relating to administering the herbicides was voluntary, can be accepted in the evidence or whether in absence of the said statement, from the materials available on record it can be conclusively inferred that the accused person administered some corrosive substance?

(ii) Whether the accused person was under obligation on the face of the evidence to disclose the special knowledge that he had about what the victim consumed that caused injuries inside her mouth and throat and what would be the impact of such non-disclosure?

(iii) Whether the evidence as led is sufficient to hold the charge proved or whether from the evidence, it has been established that the accused person has committed the offence making him liable to be convicted?

[20] The law as enunciated in **Vinod Kumar vs. State of Haryana** by the apex court is to a greater extent the law as hitherto followed in the courts in India. In **Jadunath Singh vs. State of U.P.**, reported in **(1971) 3 SCC 577**, the apex court held that it is the consistent view that an appeal against acquittal, the High Court has full power to review at large all the evidence and to reach the conclusion and upon re-appreciation of the evidence, the order of acquittal might be reversed. This power of appellate court in an appeal against acquittal was formulated by the judicial committee of the Privy Council in **Sheo Swarup vs. King Emperor**, reported in **AIR 1934 PC 227 (2)** and **Nur Mohammed vs. King Emperor**, reported in **AIR 1945 PC 151**. Those two decisions have been consistently referred in laying down true scope of the power of the appellate court in hearing the criminal appeals. In **Chandrappa vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, the apex court has culled out the general principles regarding the powers of the appellate court

while dealing an appeal against an order of acquittal. The powers are in short as follows:

- (a) the appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded,
- (b) the Cr.P.C. puts no limitation, restriction or condition in exercise of such power,
- (c) by no means the law has been sought to be interpreted to curtail the power of the appellate court to review the evidence and to come to its own conclusion.
- (d) however, the presumption of innocence that every person shall be presumed to be innocence unless his proved guilty by a competent court, the said presumption of innocence on the accused person securing acquittal gets further reinforced, reaffirmed and strengthened and
- (e) if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court is not expected to disturb the finding of acquittal recorded by the trial court.

[21] Having revisited the evidence, this Court does not find any reason to disturb the finding of acquittal of the accused person so far the charges under Sections 302 and 498-A of the I.P.C. are concerned, inasmuch as the materials relating to cruelty are tainted on the face of record. According to the opinion of the expert, who conducted the postmortem examination, the cause of death was Meningitis and the additional prosecution witness, Prof. Doley has categorically excluded the possibility of Meningitis from Paraquat poisoning. But what has surprised this Court that the

trial court has completely bypassed the evidence relating to Glotitis, burning inside the mouth and throat and difficulty of swallowing food etc. The trial court has most unceremoniously discarded the dying declaration of the victim (Exbt.16) recorded by Dr. Dipankar Ghosh (PW-20) where the victim has categorically stated that the accused person served the liquid to drink telling that it was a medicine for pain. After drinking that medicine, she felt burning sensation in the mouth, throat, chest and abdomen and she started vomiting continuously and later on, she was taken to the Narsingarh PHC. There is no infirmity in recording the said dying declaration as PW-20 has given the due certificate about the fitness of the declarant. In the examination under Section 313 of the Cr.P.C., the accused person did not say anything on the content of the said dying declaration even though that was referred. The content of the dying declaration has been corroborated by the documentary evidence namely, injury report as prepared on the basis of the medical records maintained in the Narsingarh PHC, Exbt.20. PW-27 who attended the victim on 23.04.2005 has categorically observed that she had complained that she was suffering from burning sensation in her mouth and difficulty in swallowing. There were some external injuries as well. Again on 24.04.2005, the victim was admitted in that PHC with the history of ulceration of mouth, difficulty in swallowing and epigastric burning sensation with loose motion. Even such injuries had been confirmed by Dr. Pramatesh Roy, PW-26, Dr. Pankaj Kr.

Deb, PW-28 and Dr. Pranab Chowdhury, PW-13. In this respect, the trial court has also failed to take note of the medical report of the victim as issued by the GBP hospital showing that she had an ulcer in the tongue with history of ingestion of corrosive acidic materials. The dying declaration has been simply excluded by the trial court on observing that no such statement was available to the doctor who attended prior to 30.04.2005, when the dying declaration, Exbt.16 was recorded. This is really not understandable how that can be the reason to discard the dying declaration. The trial court might have observed that solely on the basis of such dying declaration conviction of the accused person was not safe. But the dying declaration itself cannot be thrown out in such fashion. As consequence of such exclusion, the other materials borne in the medical records were not at all appreciated in their perspective. If it is not perversity, what else? The accused person's response to all medical contents, right from that of the Narsingarh PHC to the AGMC and GBP hospital was same that he did not know anything. Thus, he maintained a total silence. But in response to the question No.5 which deals with the deposition of PW-1, PW-3, PW-6, PW-9, PW-22 and PW-27, whereby it has been revealed that on 22.04.2005, the victim was brought to her father's house and treated in Narsingarh PHC by PW-27, Dr. Milan Kanti Saha, the accused person has stated as under:

"it is true that my wife went to her father's house on 22.04.2005 but I cannot say about her treatment."

[22] From the depositions of PWs-1,3,6,9 and 22 it has been established beyond any shred of doubt that from the night of 19.04.2005 the victim started facing the symptoms which she stated to PW-27 at Narsingarh PHC. The trial court again did not appreciate that aspect of the matter. From the evidence of Prof. Doley it has categorically transpired that the victim was treated for consuming some kind of acidic substance and she had been having difficulty in swallowing. The observation in Exbt.22 that the victim was suffering from Glotitis and according to her, that was caused by swallowing of some acidic substance. She has also observed as under:

"Having referred to the Dysphagia and Mucocytis, I state that the patient at that time also had Ulcer of tongue on the date of admission and was unable to talk properly and she was having difficulty in swallowing with burning sensation. On discharge she was better."

Her opinion since was confined to the documents already placed in the trial and brought to the notice of the accused person. Even there had been no requirement of fresh examination of the accused person under Section 313 of the Cr.P.C. The learned counsel appearing for the respondent did not insist for further examination of the accused person.

[23] That apart, one bottle containing some liquid was seized from the room of the accused person being led by the accused person after his arrest. One of the witnesses in whose presence (PW-7) that bottle containing the liquid was seized

turned hostile but has identified his signature on the seizure list. In such circumstances, there cannot be any reason to disbelieve the police officer who seized the bottle with liquid by preparing the seizure list. The forensic examination report of that liquid, Exbt.17 has formed categorical finding that the liquid in the bottle was Paraquat (a bypardin based herbicide). Even if, the extra-judicial confession is not relied on the ground of voluntariness, according to us, these materials as referred above, should not have been thrown out of consideration by the trial court. The approach of the trial court does not speak of required seriousness in appreciating the evidence. It is on Impression. Thus, the judgment and order of acquittal unqualified suffers from legal infirmity inasmuch by administering the Paraquat liquid to the victim, the accused person has clearly committed an offence punishable under Section 324 of the I.P.C. which provides that whoever except in the case provided for by Section 334 voluntarily causes hurt by means of any poison or corrosive substance amongst the other means or instrument of causing hurt shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine or with both.

[24] From the materials so available on the records, the prosecution has clearly established that the accused person, the respondent herein has committed the offence of administering poison or corrosive substance. Since the offence punishable under

Section 324 is minor in nature and cognate to the offence punishable under Section 302 of the I.P.C., no formal charge is required to be framed in view of Section 222 of the Cr.P.C. The respondent has been allowed to all opportunity to have his say on the materials as relied by this Court to hold that the respondent has committed offence punishable under Section 324 of the IPC. Accordingly, the respondent is convicted under Section 324 of the IPC. For commission of the offence punishable under Section 324 of the IPC, the respondent is hereby sentenced to suffer 2(two) years rigorous imprisonment. The respondent shall surrender in the trial court within a period of one month from today else the trial court shall take all steps to ensure that the respondent suffered the sentence as above. Detention, if any, in connection with this case shall be set off.

In the result, the appeal stands partly allowed.

Send down the LCRs forthwith.

JUDGE

JUDGE

Sujay