

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 671 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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STATE OF GUJARAT....Appellant(s)

Versus

MUKESH LALIT PRASAD JHA & 1....Opponent(s)/Respondent(s)

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Appearance:

MS MH BHATT, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1
 MR PB NAYAK, SR. ADVOCATE, with MR TULSHI R SAVANI, ADVOCATE
 for the Opponent(s)/Respondent(s) No. 1 - 2

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CORAM: **HONOURABLE MR.JUSTICE K.J.THAKER**

Date : 31/03/2015

ORAL JUDGMENT

1. This is an appeal by the appellant-State, challenging the judgment and order of the learned Addl. Sessions Judge (Fast Track Court No.2), Bhavnagar (for short, 'the Trial Court'), Dated : 10.12.2002, whereby, the trial Court acquitted the original accused Nos.1 and 2-Respondents, herein, of the charge under Sections 323, 498(A) and 114 of the Indian Penal Code.

2. The brief facts of the case of the prosecution, as set out before the trial Court, are that the deceased happened to be the wife of accused No.1, whereas, accused No.2 happened to be the mother-in-law of the deceased. The deceased was married with accused No.1 on 02.05.1995. The mother of the deceased, in the complaint filed by her, stated that after the marriage, accused Nos. 1 and 2 used to harass the deceased mentally and physically and due to that on 03.10.2001, while the deceased was alone at home, she set herself ablaze. On hearing the help cries of the deceased, her neighbours gathered there and tried to douse her. The deceased was, then, taken to Hospital at Bhavnagar, where, she gave a complaint against accused Nos. 1 and 2, alleging that they had beaten her up on 02.10.2001 at about 11:00 and being fade up with the same, she set herself ablaze. The D.D. of the deceased came to be recorded on 03.10.2001 and she expired on 07.10.2001. On registration of the complaint, police carried out investigation into the alleged offence and on finding sufficient evidence filed charge-sheet against them. At the time of trial, since, the accused did not plead guilty, the trial was conducted. At the end of the trial Court, the trial Court perused the entire material available on record and passed the impugned judgment and order. Hence, the present appeal.

3. At the outset, I am convinced that the prosecution cannot succeed against the mother-in-law, accused No.2, as even if we consider the D.D. before advertng to any other factual scenario, it cannot be said that any perversity has crept in the judgment of the trial Court as far as she is concerned, and therefore, I am in agreement with the submissions made by Mr. Nayak, learned Sr. Advocate, that there is no perversity and there is not a single iota of evidence against accused No.2. Thus, on the touchstone of the decisions of the Apex Court to which I shall refer hereinafter, this appeal qua accused No.2 requires to be dismissed, without assigning any further elaborate reasons.

4. This takes this Court to the case of the husband of the deceased, i.e. accused No.1. I am convinced that as far as Section 498(A) of the IPC is concerned, the evidence of the father is very clear, and therefore, the genesis of offence under Section 498(A) falls on the ground because, the main ingredients of Section 498(A) has to be cruelty coupled with the demand of dowry or money. There is not an iota of evidence of any of the witnesses, more particularly, the father of the deceased, i.e. PW-7 (Exhibit-43). PW-7, himself, in his evidence, stated that accused never demanded any amount. Therefore, the edifice of the

case of the prosecution qua Section 498(A) also falls to the ground.

5. This takes this Court to the third question / issue framed by the learned trial Court. Ms. Bhatt, learned APP, took this Court through the entire record and proceedings and also through D.D., on which heavy reliance has been place by her, and submitted that the D.D. is corroborated by the PM Report, which shows that the deceased was ill-treated and beaten, and therefore, the case of accused No.1 would fall under Sections 323 and 306 of the IPC, as far as accused No.1 is concerned. The evidence of the deceased, herself, and PW-7 go to show that there was harassment to the deceased and that before she committed the suicide, she was beaten up. But, I am convinced that the trial Court committed no error in holding that there were no marks of injury, which were due to beating immediately preceding the death of the deceased, and therefore, I am unable to persuade myself to the submission made by Ms. Bhatt that case of accused No.1 would fall under Section 323 of the IPC. Hence, this appeal fails qua offence under Section 323 of the IPC.

6. This takes this Court to the elaborate submission made by the learned Counsels for the parties and the elaborate discussion made by the

trial Court.

7. Ms. Bhatt, learned APP, submitted that the deceased committed suicide due to constant harassment meted out to her by accused No.1, which is borne out from the material on record in the form of letter written by the deceased (Exhibit Nos. 44 to 55), the compromise between the complainant and the accused side (Exhibit-57) and the original letter written by accused No.1. She submitted that even if we go by the material on record, there is corroborative piece of evidence that the accused was in habit of beating the deceased. She submitted that the witnesses have supported the case of the prosecution and since, the accused No.1 used to harass the deceased, a complaint also came to be lodged with 'A' Division Police Station. She submitted that the evidence of PW-7, i.e. father of the deceased, also shows that accused No.1 used to beat her. She also submitted that the marriage span of the accused with the deceased was less than six years, and therefore, the trial Court ought to have raised presumption under Section 113 of the Indian Evidence Act, and thereby, she prayed that the judgment of the trial Court be upturned, by allowing this appeal.

8. *Per contra*, Mr. Nayak also took this Court through the entire evidence and submitted that no one was examined from 'A' Division Police

Station to support the case of PW-7 of filing a complaint against accused with police and that the said story was fabricated at the time of lodging the complaint and the evidence of PW-7, the father of the deceased, does not show that there was immediate inducement to commit suicide. He submitted that much time has elapsed after the alleged incident and that the accused remained in jail as under-trial prisoner for about 15 months, being the mitigating circumstances, which Mr. Nayak has pointed out.

9. Thus, submissions made by Ms. Bhatt do not appeal to this Court on the touchstone of the decisions of the Apex Court and that the accused No. 1 cannot be said to have caused inducement immediately preceding death of the deceased. I am also unable to accept the submission of Ms. Bhatt that accused No.1 used to beat the deceased even after marriage, since, in her P.M. Note there is no mention of any ante-mortem injury showing beating by accused No.1.

10. The principles which would govern and regulate the hearing of an appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in catena of decisions. In a latest decision in the case of **"MURALIDHAR @ GIDDA AND ANR. VS. STATE OF KARNATAKA"**, AIR 2014 SC 2200,

the Apex Court has laid down the powers of the High Court in appeal against the order of acquittal. In para 12 of the said decision, the Apex Court has observed as under;

"12. In dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions disturbing the finding of fact recorded by the trial Court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpable wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if view taken by the court is a possible view. The evenly balanced views of the evidence

must not result in the interference by the appellate court in the judgment of the trial Court."

11. The Hon'ble Apex Court in "**SHIVASHARANAPPA & ORS. VS. STATE OF KARNATAKA**", JT 2013 (7) SC 66 has held as under;

"That appellate Court is empowered to re-appreciate the entire evidence, though, certain other principles are also to be adhered to and it has to be kept in mind that acquittal results into double presumption of innocence."

12. The Apex Court in the case of "**KULDEEP KAUR V. STATE OF UTTARAKHAND**", (2014) 10 SCC 584, observed as under in Paragraph Nos. 11 to 15:-

"11. Mr. Ahmadi contended that the finding of the trial court holding the petitioner guilty under Section 306, IPC is on the basis of surmises and conjectures. The trial court in its judgment pertaining to the appellant has reproduced a line from the diary of the deceased, which reads as "Still she wants me to work till late." It is contended that the trial court erred in presuming that when the deceased writes the above line in her diary she is referring to the appellant. It is further contended that conviction of the appellant deserves to be set aside as both the courts below failed to appreciate that the prosecution did not led any evidence on record to show that there was direct reasonable nexus between suicide and alleged cruelty. As both the courts below gave findings that

there was no demand of dowry or any cruelty committed with the deceased in connection with demand of dowry and acquitted the appellant from charge under Sections 304B, 498A IPC and under sections 3 & 4 of the Dowry Prohibition Act, the courts below could not have come to a contradictory view that the deceased committed suicide due to cruelty committed by the appellant. Even in the diary, deceased has not written even a single word against the appellant. Perusal of the diary only shows, as also observed by the trial court in its decision in the trial of other accused persons including deceased's husband, that the deceased was depressed and has left no interest in life.

12. Learned counsel appearing for the State has not disputed that although against the judgment of acquittal passed by the trial court acquitting the husband, father-in-law, brother-in-law and two sisters-in-law, the State preferred appeal but the same was dismissed by the High Court. However, no further appeal has been filed by the State before this Court. Learned counsel submitted that the conviction of the appellant under Section 306 IPC is fully justified.

13. We have perused the judgment passed by the trial court as also by the High Court. We have also gone through the judgments by which the husband, father-in-law, brother-in-law and two sisters-in-law have been acquitted by the trial court and affirmed by the High Court. So far this appellant is concerned, she has also been acquitted against the charges of dowry harassment but she has been

convicted under Section 306 IPC.

14.A perusal of trial court judgment pertaining to deceased's husband would show that PW1, father of the deceased, in his cross examination stated that no dowry was demanded by the accused persons from the day of alliance till solemnization of marriage. Whatever stridhan was given was as per the custom and as per his will in the form of gift to his daughter. He further stated that his daughter had not told him that in the absence of Upkar Singh she remained dejected in her matrimonial house because of her mother-in-law, father-in-law, sister-in-law and husband and elder brother-in-law on the issue of dowry. Witness himself stated that only God knows why her daughter committed suicide without any reason. This witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

15. We have given our anxious consideration in the matter and analyzed the evidence of the prosecution witnesses. In our considered opinion, the evidence adduced as against the appellant does not establish the case under Section 306 of the Code. On the basis of evidence of the prosecution witnesses, conviction of the appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the prosecution witnesses, the trial court acquitted all the accused persons except the present appellant and the said judgment was affirmed by the High Court. We do not find any strong reason to agree with the judgment of conviction passed by

the trial court and affirmed by the High Court as against the appellant."

13. In view of the ratio laid down by the Supreme Court in the aforesaid decisions and the factual scenario which emerges from record, it cannot be said that the accused, more particularly, accused No.1 meted out cruel treatment to the deceased so as to see that the deceased commits suicide. In light of aforesaid observations of the Apex Court and considering the evidence on record, it cannot be said that the prosecution successfully proved the offence under Sections 498(A), 323 and 306 read with Section 114 of IPC. This Court is, therefore, of the opinion that the judgment and order passed by the trial Court requires no interference at the hands of this Court.

14. In the result, this appeal fails and is **DISMISSED**. The judgment and order of the trial Court, Dated : 10.12.20002, stands **CONFIRMED**. Bail bonds of the accused, if any, on bail, stands discharged. R & P be sent back to the concerned trial Court, forthwith.

(K.J.THAKER, J)

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