

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 2253 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.J.THAKER****Sd/-**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? No
  - 2 To be referred to the Reporter or not ? No
  - 3 Whether their Lordships wish to see the fair copy of the judgment ? No
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? No
  - 5 Whether it is to be circulated to the civil judge ? No
- =====

=====

PADMABEN PRITISHBHAI RATHOD....Appellant(s)

Versus

STATE OF GUJARAT & 5....Opponent(s)/Respondent(s)

=====

Appearance:

MR CB DASTOOR, ADVOCATE for the Appellant(s) No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2 - 6

MS MONALI BHATT, APP for the Opponent(s)/Respondent(s) No. 1

=====

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

**Date : 30/01/2015**

**ORAL JUDGMENT**

1. The appellant, who is the original complainant, has preferred this appeal under Section 378 of the Criminal Procedure Code against the judgment and order dated 31.3.2003 rendered by the learned Metropolitan Magistrate, Court No.18, Ahmedabad in Criminal Case No.2272 of 1999. The said case was registered against the present respondents original accused for the offence under Sections 498-A and 114 of the Indian Penal Code as well as under Section 4 of the Dowry Prohibition Act.

2. The case of the prosecution is that the marriage of respondent no.2 was solemnized with the present appellant on 25.5.1995 and initially for one month they were happy. However the mother in law of the appellant was harassing her and giving mental torture and demanding dowry and for that purpose, on several occasions she was assaulted for non-fulfillment of the requirement of mother in law. She was also driven out from the house of respondent no.2 several time. However the appellant has no alternative except to filing the complaint against the mother in law, father in law, brother in law for the illegal demand of Rs.50,000/- for constructing shop in residential premises.

3. Thereafter, charge came to be framed and explained to the accused persons, to which the accused persons pleaded not guilty and claimed to be tried. In order to bring home the charges against the accused persons, several witnesses were examined by the

prosecution. Complaint was also produced in support of the prosecution case. The accused persons have denied the case of the prosecution and submitted that a false case is filed against them.

4. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Magistrate vide impugned Judgment, acquitted the respondents-accused. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 31.3.2003 rendered by the learned Metropolitan Magistrate, Court No.18, Ahmedabad in Criminal Case No.2272 of 1999, the appellant has preferred the present appeal before this Court.

5. Mr.Dastoor, learned advocate for the appellant has submitted that the learned Magistrate ought to have appreciated that there was both physical and and mental torture to the complainant at her matrimonial place and there is sufficient evidence which goes to show that there were enough circumstances to prove the case against the accused. He also submitted that the learned Magistrate has not considered the deposition of the appellant itself when she narrated the facts and there is no reason for woman to file the false complaint against the husband and his family members and she cannot be presumed to spoil her own marriage life without any reason. He further submitted that the learned Magistrate has erred in not appreciating the fact that there is deposition of witnesses which are corroborating with the deposition of the present appellant, and therefore it cannot be said that no cruelty was committed or no

demand of money was ever made. He also submitted that even in the proceeding of the conjugal rights filed by the appellant-wife in the Family Court, the respondent no.2 has made bald allegations against the appellant is keeping illicit relation with the brother in law and that amounts to cruelty. He also submitted that the learned Magistrate has failed in considering the fact that several complaints were filed against the respondent no.2 and, therefore, it cannot be said that there was no cruelty on the part of the respondents.

6. Learned APP has supported the case of the appellant and adopted the arguments advanced by Mr.Dastoor.

7. I have heard learned advocate for the appellant as well as learned APP for the State and perused the record. I have gone through the papers produced in the case. Looking to the charge framed against the respondent accused for the offence under Sections 498-A and 114 of the IPC, the prosecution has to prove its case beyond reasonable doubt. While passing the impugned judgment, learned Magistrate has given categorical finding that the witnesses have not supported the case of the prosecution and there are contradictions in the statements of the witnesses. It is also found that the prosecution has failed to prove that any physical or mental torture was meted out to the appellant by the respondent-accused. It is also observed that the prosecution has not examined any independent witnesses and the witnesses examined by the

prosecution were related to the appellant. It is also observed that the investigating officer has also not recorded the statements of the neighbours or friends, who would be knowing about the cruelty being meted out to the appellant. Therefore, in my view, learned Magistrate has rightly observed that from the evidence on record it could not be proved that an offence under Section 498-A is committed. It is also observed that the prosecution has also failed to lead any evidence to prove offence under the Dowry Prohibition Act. Therefore, I find that there is no infirmity in the impugned order and the lower court has rightly appreciated the evidence on record and acquitted the respondents of the charges levelled against them. Therefore, the impugned judgment is not required to be interfered with as the learned Magistrate has rightly observed that the prosecution could not prove its case beyond reasonable doubt.

8. In a recent decision of the Apex Court in the case of **State of Goa V. Sanjay Thakran & Anr. Reported in (2007)3 SCC 75**, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

*"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the*

*Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."*

9. Similar principle has been laid down by the Apex Court in the cases of **State of Uttar Pradesh Vs. Ram Veer Singh & Ors, reported in 2007 AIR SCW 5553** and in **Girja Prasad (Dead) by LRs Vs. state of MP, reported in 2007 AIR SCW 5589**. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. Even in a recent decision of the Apex Court in the case of **Mookkiah and Anr. vs. State, rep. by the Inspector of Police, Tamil Nadu (AIR 2013 SC 321)**, the Apex Court in Para-4 has held as under:

*4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on*

*record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]*

11. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. I do not find any cogent reason to interfere with the impugned decision as it cannot be said to be either perverse or not borne out from the facts of the case. The appellant has not been able to persuade this Court to take a different view in this matter. Hence, this appeal sans merit and is required to be dismissed.

12. In the result, the appeal is hereby dismissed. The impugned Judgment and order dated 31.3.2003 rendered by the learned Metropolitan Magistrate, Court No.18, Ahmedabad in Criminal Case No.2272 of 1999, acquitting the respondents-accused, is hereby confirmed. Record and Proceedings, if any, be sent back to the trial

Court concerned forthwith. Bail and bail bond, if any, stands cancelled.

Sd/-  
**(K.J.THAKER, J)**

\*malek