IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2220 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.G.URAIZEE

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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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THE STATE OF GUJARAT

Versus

MUKESHBHAI DAMJIBHAI JAMBUDIA (PRAJAPATI) & 2 other(s)

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Appearance:

MR KP RAVAL, ADDITIONAL PUBLIC PROSECUTOR for the PETITIONER(s) No. 1

MR HARSHIT TOLIA, ADVOCATE for the RESPONDENT(s)

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CORAM:**HONOURABLE MR.JUSTICE A.G.URAIZEE**

Date : 29/11/2016

ORAL JUDGMENT

The State is in appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Code” for short) to question the legality and validity of the judgment and order of acquittal

dated 31st August 2006 passed by learned Presiding Officer, 6th Fast Track Court, Rajkot in Sessions Case No.74 of 2006, whereby and where under the respondents came to be acquitted of the offences punishable under Sections 306, 498(A) read with Section 114 of the Indian Penal Code ("I.P. Code" for Short).

2 The prosecution story as unfolded during the trial is that an offence being C.R.No.I-46 /2006 came to be registered with 'B' Division Police Station, Rajkot City for the offence under Section 498A, 306 of 114 of the Indian Penal Code by the complainant – Manekben Dhirajlal on 02.04.2006. It is the case of the prosecution that Bhavana i.e. the daughter of the complainant viz., Manekben w/o Dhirajlal married to respondent-accused No.1 viz., Mukesh who is son of respondent-accused Nos.2 and 3 six to seven years prior to the registration of the offence. After the marriage, the deceased and respondent-accused No.1 were residing at Ranchodvadai, Sheri No. 1 and out of wedlock, one daughter viz., Arati aged about 4 years and one son viz., Bhavik aged about 1 year were born. As the respondent accused No.1 had illicit relation with one lady of Lodhika village, altercations were going on. That after some time mother and father of the respondent-accused No.1 i.e. the respondent-accused No.2 and 3 came from Lodhika to Rajkot and started torturing the accused. Because of instigation by the respondent-accused No.2 and 3, the respondent-accused No.1 used to beat the deceased and, hence, the deceased went to her father's home. After some time, the respondent-accused No.1 persuaded the deceased and took her to the matrimonial home. On 02.04.2006, the deceased set ablaze on herself and son and daughter. Accordingly, and F.I.R. came to be lodged.

3 On the basis of said complaint, investigation was initiated and on completion of the same, chargesheet came to be filed before the learned judicial Magistrate, First Class, Rajkot, which has been numbered as Criminal Case No.4997/2006.

4 As the offence was exclusively triable by the Court of Sessions, the Learned Judicial Magistrate, First Class, Rajkot was pleased to commit the case to the Court of Sessions under Section 209 of the Criminal Procedure Code, which has been numbered as Sessions Case No. 74/2006.

5 The Learned Additional Sessions Judge, Fast Track Court No.6 Rajkot was pleased to frame charge vide exh.1. vide Exhs.2, 3 and 4 and plea of each of the respondents-accused was recorded, wherein the respondents-accused pleaded not guilty and claimed to be tried. In order to bring home the guilt of the respondents-accused, the prosecution adduced oral and documentary evidence as under :

ORAL EVIDENCE

PW No.	Name	Exhibit
1	Gautambhai Dalpatbhai	7
2	Dhaniben Pemjibha	9
3	Ashwinbhen Bacubhai	11
4	Janakbhai jerambhai	12
5	Dineshbhai Bhimjibhai	14
6	Manekben Dhirjalal, Complainant	15
7	Rajeshbhai Dhirjalal	17
8	Bhartiben Maganbhai	18

9	Vasantbhai Khimjibhai	19
10	Maheshbhai Ranchodbhai	39
11	Pareshbhai Mansukhbhai	41
12	Dolatsing balvantsing Solanki	20
13	Keshbhai Devabhai Makvana	24
14	Mulubhai Ghodhabhai dhar	35
15	Fulbhai Devashibhai Parmar	42

Documentary Evidence

Sr.No.	Description of the document	Exhibit
1	Arrest Panchnama of the accused	8
2	Inquest punchnama of the deceased Bhavnaben and minors Aarti and Bhavik	10
3	Punchnama of recovery of clothes of deceased Bhavnaben and minors Aarti and Bhavik	13
4	Complaint	16
5	True copy of station dairy where accidental death note regarding death of Bhavnaben was noted	21
6	Extract of Entry No.14/06 of Station Diary of B Division Police Station	22
7	Order of handing over the investigation into accidental death	23
8	Order of handing over the investigation of the present crime	25
9	Police report for performing post-mortem examination of Bhavnaben	26
10	Police report for performing post-mortem examination of Aarti	27
11	Police report for performing post-mortem examination of Bhavik	28
12	Medical certificate regarding cause of death	29
13	PM report of Bhavnaben	30

14	Aarti's P.M. Report	31
15	P.M report of Bhavik	32
16	MLC Case Papers of Government Hospital	34
17	Detention Memo of the accused	36
18	Mudamal dispatch letter with the details documents mentioned in it	37
19	Acknowledge of receipt of muddamal	38
20	Yadi from Executive Magistrate as regards inquest memo	43
21	Yadi for performing post mortem of three deceased	44
22	Yadi sent to FSL Officer for conducting the examination of place of offence	45
23	Report of FSL as regards scene of offence	46

6 At the end of the trial, the trial court recorded further statement of the accused persons under section 313 of the Code and after hearing the arguments, the trial court acquitted the accused persons of the charges levelled against them. Feeling aggrieved by the said judgment and conviction order of the trial court, the present appeal came to be preferred.

7 I have heard Mr K.P. Raval, learned Additional Public Prosecutor for the appellant-State and Mr Harshit Tolia, learned advocate for the respondents-original accused persons.

8 The learned APP submits that the husband of the deceased was having illicit relations with another lady and because of which there are frequent disputes with the deceased and her husband. It is her further contention that it is borne out from the evidence of Manekben Dhirajalal, PW No.6-original complainant and mother of the deceased at Exhibit 15 that the deceased was subjected to mental and physical cruelty by the respondents. The learned APP would also submit that the evidence of

the complainant, PW No.6 – mother of the deceased is supported by the evidence of PW Nos.7 and 8 which would prove beyond reasonable doubt that the deceased was subjected to cruelty and therefore the learned trial judge has committed an error in acquitting the respondents. It is therefore submitted that the appeal may be allowed and the respondents may be convicted.

9 Shri Majmudar, learned advocate for the respondents has supported the impugned judgment. He submitted that the learned trial judge has rightly recorded a finding that the prosecution has failed to prove the case against the respondents beyond reasonable doubt. According to his submission, the scope of acquittal appeal is very limited and if plausible view is adopted by the trial court for acquitting the accused person, it cannot be substituted by any other plausible in acquittal appeal. He, therefore, urges that the appeal lacks merits and the same may be dismissed.

10 The incident in question took place on 2.4.2006 at about 4 PM in the residential house of the deceased – Bhavnaben. At the time when the incident happened, the deceased and her children were present and the husband of the deceased had gone to Lodhika four days prior to the incident where his parents were residing. The prosecution has not brought on record any evidence which would indicate that prior to the unfortunate incident there were no circumstances which would have driven the deceased to take extreme step of committing sucide by setting herself ablaze and her children. From the panchnama of scene of offence, the incident took place in the bedroom and the kerosene can and matches were also present in the bedroom. The door to the bedroom was closed and as the door was forcefully opened the latches/ stoppers were in bent condition.

11 The prosecution witnesses have failed to establish the mental torture meted out to the deceased. PW No.6-mother of the deceased could not establish that because of illicit relations of A/1 that there used to be frequent quarrels in the house of the deceased and the A/2 and A/3 were inciting and instigating the A/1 to give have physical torture to the deceased and therefore, the deceased could not bear the cruelty and she ended her life by committing suicide.

12. In the face of this set of oral and documentary evidence, the moot question that remains to be answered is whether the deceased ended her life by setting herself ablaze owing to the physical and mental harassment caused by the respondents. The evidence available on the record unfortunately is not, in my opinion, enough and clinching to record a finding that the deceased had committed suicide because of harassment and metnal torture caused to the deceased by the respondents.

13 Mr Tolia, learned advocate for the respondents has rightly submitted that the scope of acquittal appeal is limited and circumscribed. If the view adopted by the court below for acquitting the accused persons is plausible and reasonable, the appellate court cannot adopt any other plausible view to upturn the acquittal recorded by the trial court.

14 Further, the scope of the acquittal appeal under Section 378(1)(3) of the Code is limited. The Supreme Court in the case of **Sadhu Saran Sing v/s. State of Uttar Pradesh, (2016) 4 SCC 357,** have explained this court of acquittal appeal in paragraph 20 as under :

> "20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal in Sambasivan v. State of Kerala, (1998) 5 SCC 412 has held:
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> 7. " The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal, are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal."

15 Under the circumstances, when the view adopted by the learned trial judge is plausible and the reasons and findings recorded by the learned Trial Judge to acquit the respondent cannot be said to be perverse or illegal, the learned impugned judgment of acquittal does not warrant any interference in this appeal.

16. For the foregoing reasons, the appeal fails and is hereby dismissed. The judgment and order of acquittal dated 31st August 2006

passed by learned Presiding Officer, Fast Track Court No.6, Rajkot in Sessions Case No.74 of 2006 is hereby confirmed. R & P is ordered to be remitted to the trial Court to the forthwith.

(A.G.URAIZEE, J)

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