IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 221 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.G.URAIZEE

==========

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 ?	

==========

STATE OF GUJARAT
Versus
MOHANBHAI JETHABHAI TALPADA & 1 other(s)

==========

Appearance:
MR KP RAVAL, ADDITIONAL PUBLIC PROSECUTOR for the PETITIONER(s) No. 1
MR YOGENDRA THAKORE, ADVOCATE for the RESPONDENT(s)

==========

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

Date : 01/05/2017

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 28th February 2007 passed by learned Additional Sessions Judge and Presiding Officer, Fast Track Court 3, Anand in Sessions Case No.237 of 2003, 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 came to be registered with Umreth Police Station for the offence under Section 498A, 306 of 114 of the Indian Penal Code by the complainant – Vitthalbhai Lallubhai Talpada on 31.07.2003. It is the case of the prosecution that Bhanuben i.e. the daughter of the complainant was married to respondent-accused No.1 – Ranchhodbhai Mohanbhai Talpada, who is son of Mohanbhai Talpada five years prior to the registration of the offence. After the marriage, the deceased and respondent-accused No.1 were residing at Umreth and out of wedlock, one son and one daughter were born. Incidentally, Meena, another daughter of the complainant was married with Rameshbhai Talpada, son of Mohanbhai Talpada. However, as she was minor, she was not sent to her matrimonial home and in that regard there were disputes which led to divorce of Meena. After the divorce of Meena, the inlaws of the deceased started harassing her and whenever deceased Bhanuben used to come to her parental home, she used to describe about the mental and physical torture being caused to her at her matrimonial home. However, the complainant persuaded the deceased and took her to the matrimonial home. On 31.07.2003, the complainant received a message that his daughter set herself ablaze and was admitted at Karamsad Hospital. Therefore, the complainant and his family members rushed to the hospital and on asking her as to what happened, she informed him that two days earlier while she was

cooking kheer, her husband-Accused No.1 started giving her filthy abuses and stated that if she cannot do work, she should set herself ablaze and her husband was joined by her father-in-law by giving abuses to the deceased while accused No.3 – Ramesh Mohan Talpada was instigating both the accused persons. Therefore, unable to digest such humiliation and abuses, she poured kerosene over her body and set herself on fire. Accordingly, an 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, Anand. However, as the offence was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Anand 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. 77 of 2006.

4 The Learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.3, Anand was pleased to frame charge vide 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	Vishnubhai Ranchhodbhai Patel	64
2	Dr Hasumatiben Ranchhodbhai Patel	67
3	Dr Sanjay Krishnadas Parikh	70
4	Pravinsinh Rajvatsinh Vadodiya	72
5	Vitthalbhai Lallubhai Talapada	86
6	Maniben Vitthalbhai Talpada	88

7	Babubhai Shanabhai Talpada	89
8	Bharatkumar Chandulal Bhandari	91
9	Ranmalsinh Chandrasinh Rathod	94
10	Narsingbhai Vastabhai	106
11	Dr Vijaykumar Sonsing	111

Documentary Evidence

Sr.No.	Description of the document	Exhibit
1	Telephone Message	74-75
2	Yadi of ASI, Umreth Town Beat	76
3	Original Complaint	87
4	Panchnama of scene of offence	73
5	Inquest Panchnama	77
6	Panchnama of physical condition of accused Ranchhodbhai	78
7	FSL Report	79
8	Message for recording dying declaration	80
9	Intimation sent to the Medical Officer	81
10	Dying Declaration	66
11	Dying declaration of the victim recorded by DySP	92
12	Form	82
13	Telephone Message	83
14	Telephone Message	99
15	Message of Umreth Police Station	84
16	PM Report	68
17	Yadi	69
18	Acknowledgement of receipt of dead body	85
19	School Leaving Certificate of Ranchhodbhai	71
20	Muddamal Transit Note	95
21	FSL Letter	96-97

22	FSL Report	98
23	Intimation sent to Executive Magistrate	65
24	Intimation sent to Executive Magistrate	100

5 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.

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

7 Mr Raval, learned APP submits that there are two oral declarations: one before the father (PW No.5) and the other before her mother (PW No.6) and one dying declaration before the Executive Magistrate (PW No.1). It is his submission that there are no major or serious inconsistencies between oral declarations and dying declaration (Exhibit 66) of the deceased and if at all there are inconsistencies, they are trivial and not fatal to the case of the prosecution. He, therefore, submits that the deceased was subjected to cruelty by the respondents on accout of household work, which led the deceased to end her life. He would submit that the prosecution has proved the case against the respondent beyond reasonable doubt and therefore the appeal may be allowed and the respondents may be convicted.

8 Shri Yogendra Thakore, learned advocate for the respondents has supported the impugned judgment. He further submitted that original accused no.1 has expired during the pendency of the trial. He

further submits that the conduct of the respondent after the deceased put herself ablaze cannot be ignored. It was the deceased-husband who tried to save the deceased and took her to the hospital with original accused nos.2 and 3. The evidence of PW No.2 – Dr Hasumatiben Ranchhodbhai Patel at Exhibit 67, who initially treated the deceased, supports the say of the respondents that the deceased had caught fire while preparing the food. He would also submit that it is clear from the evidence of the prosecution that original accused nos.2 and 3 were not present when the deceased put herself ablaze. He also submits that the learned trial judge has considered all the dying declarations in detail and recorded cogent reasons for not believing the dying declarations and since the impugned judgement and order of acquittal does not suffer from any illegality or perversity, in view of the settled proposition of law, even if two views are possible, the view taken by the trail court cannot be substituted in appeal. He further 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.

9 It is imminently clear that the prosecution case against the respondents is essentially is based on oral as well as the dying declaration of the deceased before the Executive Magistrate.

10 The proposition of law as regards appreciation of multiple dying declarations is very clear. In cases of multiple dying declarations, the Court has to satisfy itself whether there is consistency in the multiple

dying declarations inspire confidence of the Court, then only the conviction can be bases on the dying declaration.

11 In the present case, it appears from the evidence of PW No.5 – Vitthalbhai Lallubhai Tadpara, original complainant, who happens to be the father of the deceased and Maniben Vitthalbhai Talpada, PW No.6, mother of the deceased though jointly stated in their respective statements that the deceased Bhanuben was subjected to physical and mental cruelty it does not emerge from the testimony as to why the deceased was subjected to such physical and mental cruelty. It appears from the dying declaration at Exhibit 66 before the Executive Magistrate that on the date of the incident, there was a quarrel between the deceased and her husband on account of preparation of food and her husband gave filthy abuses to her which made her feel bad and therefore she poured kerosene on her body and set herself ablaze. It does not emerge from this dying declaration that in the past also she was subjected to physical and mental cruelty eitehr by the respondents or by her husband. Under the circumstances, it is very difficult to believe that on account of solitary incident of squabble between the deceased and her husband regarding preparation of meal, her husband and the respondents instigated her to end her life. It also emerges from the evidence on record that the present respondents appeared on the scene after she set herself on fire and only allegation against the respondents is that they also exhorted let the deceased die.

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 Thakore, 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:
>
> "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 respondents 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 28th February 2007 passed by learned Additional Sessions Judge and Presiding Officer, Fast Track Court 3, Anand in Sessions Case No.237 of 2003 is hereby confirmed. R & P is ordered to be remitted to the trial Court to the forthwith.

(A.G.URAIZEE, J)

mohd