

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 1603 of 2004**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.G.URAIZEE

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 or any order made thereunder ?	No

STATE OF GUJARAT
Versus
DIVYAPRAKASH JAMNADAS RATHOD & 2 other(s)

Appearance:

MS RITA CHANDARANA, APP for the Appellant(s) No. 1

ABATED for the Opponent(s)/Respondent(s) No. 2

MR G R MANAV(6064) for the Opponent(s)/Respondent(s) No. 1,3

CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE

Date : 05/05/2017

ORAL JUDGMENT

1. The appellant-State has assailed the judgment and order of acquittal dated 21.05.2004 passed by the learned Additional Sessions Judge, Court No.17, Ahmedabad City in Sessions Case No.1 of 2003, whereunder, the respondents came to be acquitted of the offences under Section 306, 498(A), 114 of the Indian Penal Code (“I.P. Code” for short) and Section 3 and 7 of the Prevention of Dowry Act (“Dowry Act” for short).

2. At the threshold it needs to be noted that the respondent No.2-Jamnadas Muljibhai Rathod has expired

during the pendency of appeal on 11.12.2009. Hence, by order dated 24.09.2015, the present appeal qua him is order to abate.

3. The facts giving rise to the present appeal as could be gathered from the memo of appeal and the connected material are as under:-

3.1. The complainant (p.w.1) Chandubhai Mohanbhai Verma, the father of the deceased Dipali, filed the complaint to the effect that on 06.05.2001, the marriage of his daughter, i.e. deceased Dipali was performed with the respondent No.1 of this case. That the respondents Nos. 2 and 3 are the Father-in-law and Mother-in-law of the deceased respectively. That after marriage the deceased was staying with her in-laws at Pritampura Society, Girdharnagar, Shahibaug, Ahmedabad. That as per the case of the prosecution, after two months of the marriage of the deceased, all the present accused started harassing her mentally and physically. All the respondents taunting and ill treating the deceased for bringing a less dowry. That as the mental and physical harassment became intolerable, Dipali committed suicide on 15.06.2005 by consuming poisonous medicine. P.W.1, therefore, lodged a complaint in respect of the death of his daughter - Dipali with the Shahibaug Police Station on the basis of which FIR vide C.R. No.I-89/2002 for the offence under Sections 306, 498(A) and 114 of the IPC and Section 3 & 7 of Dowry Act.

4. Thereupon, conclusion of the investigation, the charge-sheet came to be filed against the respondents for

the offences under Section 306, 498(A) and 114 of the IPC and Section 3 & 7 of Dowry Act. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the City Sessions Court where it was registered as Sessions Case No.1 of 2003.

5. The learned City Sessions Judge, Ahmedabad City framed charges against the respondents vide Exhibit-2. The respondents pleaded not guilty to the charge and claimed to be tried. Thereafter, the Sessions Case came to be transferred to the Court of learned Additional City Sessions Judge, Court No.17 who recorded the ocular and documentary evidence.

6. In order to bring home the charge against the respondents, the prosecution adduced the ocular as well as documentary evidence as under:-

Ocular Evidence		
1	Chandubhai Mohanbhai Verma	Exhibit-1
2	Maniben Chandubhai Parmar	Exhibit-12
3	Hiraben Babubhai Makwana	Exhibit-19
4	Maganbhai Pujabhai Dulera	Exhibit-20
5	Rajubhai Naranbhai Makwana	Exhibit-21
6	Urmila Chandbhai Verma	Exhibit-22
7	Mukesh Vashrambhai Patel	Exhibit-24
8	Dalpatbhai Somabhai Patel	Exhibit-26
9	Mukeshbhai Chandulal Verma	Exhibit-28
10	Shaileshbhai Naranbhai	Exhibit-29
11	Gopalbhai Somabhai Makwana	Exhibit-37
12	Ishwarsingh Parbatsingh Vaghela	Exhibit-39
13	Mh. Yunush Abbasbhai Mansuri	Exhibit-41
14	Rasikbhai Naranbhai Guna	Exhibit-45

15	Dharmendrasingh R. Raol	Exhibit-53
16	Sirajmiya B. Bobar	Exhibit-55
17	Nazir Ahmedkhan N. Pathan	Exhibit-60

Documentary Evidence		
1	Vardi at the time of P.M.O.	Exhibit-40
2	Complaint of Complainant- Chandulal Verma	Exhibit-56
3	Report of Section 157 of D.P. Act	Exhibit-57
4	Inquest Panchnama	Exhibit-42
5	Panchanama of place of incident	Exhibit-58
6	Panchnama of Cloth of deceased	Exhibit-31
7	Medical Certificate	Exhibit-38
8	P.M. Note	Exhibit-32
9	Sending of Muddamal of F.S.L. Report acknowledgement	Exhibit-33
10	Letter of Civil Surgeon	Exhibit-34
11	Report of F.S.L	Exhibit-35
12	Panchnama of Self-signed diary of deceased taken into custody	Exhibit-30
13	Intention of signature expert acknowledge	Exhibit-36
14	Intention of signature expert	Exhibit-46
15	Panchnama of diary of deceased	Exhibit-27

7. After conclusion of the evidence of prosecution, the statement of respondent under Section 313 of the Code was recorded there defence is on complete denial. The respondents did not examined themselves in the defence. However, following witnesses were examined by them as defence witness.

1	Manjulaben Prabhudas Rathod	D.W.1	Exh.61
2	Ghanshyam Chhodlal Patel	D.W.2	Exh.63

3	Naturbhai Solanki	D.W.3	Exh.65
4	Siddiqbhai Mulla	D.W.4	Exh.69

8. The learned trial Judge after considering the ocular and documentary evidence produced by the prosecution and the defence and after considering oral and written arguments on behalf of the prosecution and defence, by the impugned judgment acquitted the respondents, hence, this appeal.

9. I have heard Ms. Rita Chandarana, learned APP for the appellant-State and Mr. G.R. Manav, learned advocate for the respondents. Perused the record of Sessions Case No.1/2003.

10. Ms. Chandarana, learned APP for the appellant-State has vehemently submits that the learned trial Judge has committed the serious error in not believing the death of deceased - Dipali was not suicidal death. According to her submission, there is medical evidence on record to show beyond reasonable doubt that the death of deceased - Dipali was suicidal death.

11. It is her further submission that the learned trial Judge has committed serious error in properly appreciating documentary evidence in the form of diary written by the deceased - Dipali in which she has recorded that she was subjected to mentally and physically harassment by the respondents. She would also submit that father of the deceased Chandubhai Mohanbhai Verma (p.w.1 original complainant) has clearly stated in his evidence that the deceased would used to complain about the mental and

physical harassment meted out to her by the respondents whenever she would visit her parental home. She submits that this witness has also stated that one day before the unfortunate incident on 14.06.2002, deceased – Dipali had complained on phone to him about the unbearable mental and physical torture by the respondents. It is his further submission that the evidence of p.w.1 is supported by the evidence of other witnesses. She further submits that the deceased – Dipali had committed suicide within short span of 8 months of her marriage with respondent No.1. She, therefore, submits that the learned trial Judge ought to have drawn presumption under Section 113(A) of the Evidence Act against the respondents. She, therefore, urges that the appeal may be allowed and the respondents may be convicted for the offence with which they have been charged.

12. Mr. G.R. Manav, learned advocate for the respondents has supported the impugned judgment. He submits that there is no conclusive evidence to prove beyond reasonable doubt that the deceased - Dipali had committed suicide by consuming poison. He submits that the learned trial Judge has given detailed reasons after appreciating FSL report and P.M. Note to record a finding that the death of the deceased – Dipali was not homicidal death. It is his further submission that learned trial Judge has appreciated the personal diary which deceased - Dipali had written and recorded a finding that the contents of the diary are not reliable and there seems to be some manipulations in the writing. He submits that the prosecution has failed to prove that the deceased - Dipali had committed suicide due to harassment and ill treatment meted out to her and

she was left with no option but to end her life as contemplated under Sections 107 and 306 of IPC.

13. Mr. G.R. Manav, learned advocate for the respondents further submits that the prosecution has also failed to prove that the deceased - Dipali was subjected to torture and harassment for not bringing sufficient dowry. He submits that defence has successfully prove that there is no custom of dowry in the community to which the respondents and original complainant belong.

14. Mr. G.R. Manav, learned advocate for the respondents further submits that scope of acquittal appeal is very limited and acquittal recorded by the trial Court cannot be rightly interfered with by the appellate Court if the view taken by the trial Court is plausible as per the catena of decisions of Hon'ble Supreme Court and Hon'ble this High Court.

15. Mr. G.R. Manav, learned advocate for the respondents relied upon following decisions in support of his arguments:-

- “(1) *Sharad Biridhich and Sarda v. State of Maharashtra* (AIR 1984 SC 1622)
- (2) *Sushil Kumar Sharma v. Union of India and others* (AIR 2005 SC 3100)
- (3) *Chitresh Kumar Chopra v. State (Govt. Of NCT Delhi* (AIR 2010 SC 1446)
- (4) *Subhasbhai Chandubhai Patel v. State of Gujarat* (2007 CriLJ 320)
- (5) *Gangula Mohan Reddy v. State of Andhra Pradesh* (AIR 2010 SC 327)
- (6) *Inderpal v. State of Madhya Pradesh* (AIR 2001 SCW 5092)
- (7) *State of West Bengal v. Orilal Jaiswal and Another* (AIR 1994 SC 1418)
- (8) *Ramesh Kumar v. State of Chhattishgarh* (AIR 2001 SC 3887)
- (9) *Hans Raj v. State of Haryana* (AIR 2004 SC 2790)
- (10) *Rajbabu and Another v. State of Madhya Pradesh* (AIR 2008 SC 3212)
- (11) *Nareshbhai Keshavlal Choksi v. State of Gujarat* (CR.A. No.17169/2013 with CR.A. No.20387/2014 dated 26.03.2015)

- (12) *State of U.P. v. Nandu Vishwakarma & Ors. [2009(2) CRIMINAL 674]*
(13) *Madan Mohan Singh v. State of Gujarat and Another [JT 2010 (10) SC 641]*”

16. So far as the question of death of deceased - Dipali is suicidal or otherwise is concerned, the medical evidence in the form of P.M. Note Exhibit-32, Medical Certificate Exhibit-38, FSL report Exhibit-35 and evidence of Dr. Gopalbhai Somabhai Makwana, P.W.11 Exhibit-37 have material bearing.

17. It emerges from the evidence of p.w.11 Dr. Gopalbhai Somabhai Makwana that he had conducted postmortem of deceased - Dipali along with another doctor. It also becomes very clear and it is not disputed that after conducting the postmortem, cause of death is kept reserve till receipt of FSL report.

18. The FSL report Exhibit-35 in clear terms states that no chemical poison was found. After receipt of Exhibit-35 FSL report in column No.23 of P.M. Note which is in respect of cause of death. It is recorded that FSL report show no chemical poison detected. After receiving FSL report and gross postmortem finding the cause of death is stated to be due to undetected irritant poison. P.W.11 Dr. Makwana have not explained in its oral evidence before the Court as to on what basis cause of death due to undetected irritant poison is stated.

19. The perusal of evidence of Dr. Makwana, P.M. Note and FSL report do not indicate that the death of deceased had occurred because of consumption of some poison. It is very strange that though FSL report has very clearly stated

that no chemical poison was found, still however, Mr. Makwana and other doctor have in column No.23 of P.M. Note on the basis of FSL report stated that the cause of death of deceased – Dipali is undetected irritant poison. It is thus eminently clear that there was no shred of evidence that the deceased – Dipali had died due to consumption of poison, have unknown reason an attempt is made to show that deceased - Dipali had died after consumption of poison and thereby she had committed suicide.

20. The learned trial Judge has in detailed considered the evidence of P.W.11 Dr. Makwana P.M. Note and FSL report and by assigning cogent and convincing reasons recorded the finding that the prosecution has failed to prove that the death of deceased - Dipali was a suicidal death.

21. The prosecution has heavily relied on the evidence of P.W.1 father of the deceased, P.W.2 mother of the deceased, P.W.5 sister of the deceased and P.W.9 brother of the deceased to prove that deceased – Dipali was subjected to ill treatment by the respondents for not bringing sufficient dowry. P.W.1 has stated in his oral evidence that whenever used to come to parental home, she would complain about her plight of being harassed and subjected to torture for not bringing sufficient dowry. He says that before one day of committing suicide, the deceased – Dipali had telephonically conveyed to him that she was subjected to ill treatment by the respondents. The other witness have also reiterated the same thing.

22. The learned trial Judge has also considered the evidence of p.w.1 father of the deceased and other material witnesses as also Exhibit-14, Exhibit-17 personal diary of deceased - Dipali to record finding that prosecution has failed to prove that the deceased - Dipali was subjected to mentally and physically ill treatment for bringing less dowry.

23. The prosecution has also relied upon the Exhibit-17 personal diary of the deceased to support the evidence of P.W.1 and other witness that the deceased – Dipali was subjected to ill treatment by the respondents for bringing less dowry.

24. Perusal of the oral evidence coupled with the documentary evidence in the form of Exhibit-17 personal diary of the deceased present some contradictory picture. The deceased has noted about her blissful married life in her personal diary. There is no hint that she was subjected to ill treatment and torture by the respondents for not fulfillment of dowry demand.

25. The learned trial Judge has given detailed reasons on Exhibit-17 personal diary of deceased - Dipali. At many places in the diary, the learned trial Judge has found manipulation and has recorded that no where in the diary deceased has stated that she was subjected to ill treatment for having brought less dowry.

26. The learned trial Judge has, accordingly, by assigning cogent and convincing reason has held that the prosecution has failed to prove beyond reasonable doubt that the deceased - Dipali had committed suicide because of ill

treatment meted out to her by the respondents.

27. The Supreme Court has in catena of decisions held that the power of appellate Court in an appeal against acquittal is the same as that on an appeal against conviction. In an appeal against acquittal, the Court has to bare in mind that the presumption of innocence is in favour of the accused and the same is strengthened by the order of acquittal. At the same time appellate Court will not in favour with the order of acquittal mainly because two views are possible but only when the High Court feels that the appreciation of evidence is based on erroneous considerations and when there is manifest illegality in a conclusion arrived at by the trial Court.

28. The trial Court has thread bare considered the ocular and documentary evidence adduced before it by the prosecution as well as the defence and after giving cogent and convincing reasons it has recorded a finding that the prosecution has failed to prove that the death of deceased was suicidal and that she had committed suicide because of mental and physical torture meted out to her for not bringing enough dowry. The presumption under Section 113(A) of the Evidence Act, in my considered view is not automatic if the death of women happens within 7 years of her marriage. The prosecution in such cases has to adduce some convincing reliable evidence to enable the Court to draw a presumption that the women had committed suicide because of the harassment meted out to her by her husband and in-laws.

29. I am in complete agreement that the reasons assigned by the learned trial Judge in acquitting the respondents. The impugned judgment and order of acquittal, therefore, in my view does not warrant any interference.

30. For the foregoing reasons, the appeal fails and is hereby dismissed.

31. Record and Proceedings be transmitted to the trial Court forthwith.

Sd/-
(A.G.URAIZEE, J)

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