

Gujarat High Court

State Of Gujarat vs Hajuben W/O Hushenbhai Mamadbhai ... on 2 May, 2023

Bench: Rajendra M. Sareen

R/CR.A/1553/2016

CAV JUDGMENT DATED: 02/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1553 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN Sd/-

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1 Whether Reporters of Local Papers may be allowed Yes to see the judgment ?

2 To be referred to the Reporter or not ? Yes 3 Whether their Lordships wish to see the fair copy No of the judgment ?

4 Whether this case involves a substantial question No of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== STATE OF GUJARAT Versus HAJUBEN W/O HUSHENBHAI MAMADBHAI NOTIYAR & 1 other(s) ===== Appearance:

MR HD MEHTA, ADDL PUBLIC PROSECUTOR for the Appellant(s) No. 1 MR PREMAL S R A C H H (3 2 9 7) for the Opponent(s) / Respondent(s) No. 1, 2
===== CORAM:HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN Date : 02/05/2023 CAV JUDGMENT

1. This appeal is filed by the appellant - State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 15.07.2016, passed in Sessions Case No. 45 of 2012 by the learned 6 th Additional Sessions Judge, Jamnagar recording the acquittal.

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2. Facts in brief are that on 03.08.2011 in the morning hours, when complainant was coming towards Jamnagar from Jabalpur, when he reached near Lalpur Chowkdi, has received telephonic message that his mother - Pravinaba has received burn injuries and she is admitted in GG Hospital, Jamnagar. When he reached the hospital, his mother was in burnt condition and she had stated to the complainant that on 03.08.2011 at about 6:00 a.m., when she was going for latrine, their

neighbour Hajuben, who is accused No.1 in this case came out from her house and started combing her hair in front of deceased Pravinaben. Hence, she felt that accused No.1 will do something to her and therefore, she went to her house and took out kerosene tin and went to the kitchen of accused No.1, poured kerosene on herself and burnt herself. Therefore, case of the complainant is that his mother deceased - Pravinaba committed suicide by burning herself on account of mental harassment and ill treatment from the respondents - accused, since it is alleged that both the accused were harassing her since long. A complainant lodged the FIR in question against the respondents for the offence punishable under Sections 306 and 114 of the Indian Penal Code, 1860 (herein after referred to as "the IPC").

2.1 Upon such FIR being filed, investigation started and the Investigating Officer recorded statements of the witnesses and R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 produced certain documentary evidence and after completion of the investigation, Charge-sheet was filed against the accused for the offence in question. The case was committed to the Sessions Court and the learned trial Judge framed the Charge. Since the respondents - accused did not plead guilty, trial was proceeded against the respondents - accused. Vide impugned judgment and order dated 15.07.2016, the learned trial Judge acquitted the respondents - accused. Being aggrieved by the same, the State has preferred the present appeal.

3. Heard, learned Additional Public Prosecutor Mr. H. D. Mehta for the appellant - State and learned advocate Mr.Premal S. Rachh for the for respondents - accused. Perused the record.

3.1 The learned APP has mainly contended that the learned trial Judge has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. She submitted that the impugned judgment of the trial Court is based on presumptions and inferences and thereby, it is against the facts and the evidence on record. The learned APP further submitted that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby, has erred in recording the acquittal of the respondents

- accused.

R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 3.2 The learned APP further contended that the learned trial Judge has erred in holding that the prosecution has failed to prove beyond reasonable doubt that the accused persons have harassed the deceased mentally and tortured her for one for the other reason, which led her to commit suicide.

3.3 The learned APP for the appellant - State submitted that despite sufficient material was there on record in support of the case of the prosecution and though the prosecution successfully proved its case beyond reasonable doubt, the learned trial Judge has committed error in discarding the evidence on record and not believing the same.

3.4 It is submitted that the trial Court has wrongly come to the conclusion that when a person has received 95 to 97% burn injuries over the body then he or she cannot give dying declaration for 42 minutes and thereby, the dying declaration was ignored by the trial Court. As such due to this reason

only, dying declaration cannot be ignored by the trial Court, though the dying declaration which is produced at Exh.54 clearly indicates that accused are involved in the the offence and because of their harassment, deceased has committed the suicide.

R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 3.5 The learned APP, taking this Court through the oral as well as the documentary evidence on record, submitted that though the prosecution has proved the case against the accused beyond reasonable doubt, the learned trial Judge has not properly appreciated the evidence on record and thereby, has committed an error in recording acquittal. It is submitted that though all the ingredients of the offence alleged had been proved, the learned trial Judge did not believe the same and therefore, the impugned judgment and order suffers from material illegality, perversity and contrary to the facts and evidence on record.

3.6 Thus, the learned APP has submitted that although cogent and material evidence had been produced by the prosecution and the case was proved beyond reasonable doubt, the trial Court has committed a grave error in acquitting the accused and accordingly, it is urged that present appeal may be allowed by quashing and setting aside the impugned judgment and order of acquittal.

4. Per contra, learned advocate Mr. Rachh for the respondents - accused, while supporting the impugned judgment and order of the trial Court, submitted that the learned trial Judge has, after due and proper appreciation and evaluation of the evidence on record, has come to such R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 conclusion and has acquitted the accused, which is just and proper. He submitted that it is trite law that if two views are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, 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.

4.1 The learned advocate for the respondents - accused submitted that the ingredients of the offence alleged against the accused are not proved by the prosecution beyond reasonable doubt and there were several contradictions and omissions in the evidence on record and therefore, the learned trial Judge has rightly acquitted the accused of the charges levelled against him.

4.2 It is submitted that the prosecution has also not been able to establish that the actual incident of harassment has taken place and that all the witnesses examined by the prosecution are relatives of the deceased and no independent witness has been examined. Under such circumstances, when there is no iota of evidence against the respondents, it cannot be said that the prosecution has proved beyond reasonable R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 doubt and therefore, the trial court has rightly acquitted the respondents - accused.

4.3 It is also submitted that there are contradictions regarding the period from how many years complainant and his family were living in neighborhood of the respondent, since the case of the prosecution is that respondents are harassing the deceased since 10 years, as such sister in law of the deceased deposed that the deceased came to Jamnagar about One year ago, whereas brother in law of the deceased deposed that the deceased came to Jamnagar about 4 months ago and

importantly, the complainant in his deposition admitted that they came to live in Jamnagar city about a year ago and that they are not living in Jamnagar since 10 years.

4.4 It is further submitted that there is major contradictions in the deposition of the son of the deceased namely Shaktisinh and dying declaration. As Shaktisinh deposed that his mother was burnt completely and could not walk or talk and that they have reached the hospital at 10:00 am, whereas as per the endorsement in dying declaration, it was started at 9:48 am and ended at 10:30 am, which is almost 42 minutes long. As per the PM note, deceased had suffered 95 to 97% burns. Therefore, it is difficult to believe that 95% burnt person can talk for 42 minutes in fit state of mind therefore, dying R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 declaration cannot be believed.

4.5 It is submitted that for conviction under Section 306 of IPC, it is required that the cause of such suicide must be the only reason and in such proximity due to which the deceased committed suicide. However, the prosecution has failed to establish any such proximity or reason due to which the deceased committed suicide. Therefore, the acquittal awarded by the trial Court is just and proper.

4.6 Thus, making above submissions, it is urged that no interference is required at the hands of this Court and eventually, it is urged that the present appeal may be dismissed.

4.7 In support, the learned advocate for the respondents - accused has relied upon following decisions:

i) Amlendu Pal @ Jhantu vs. State of West Bengal reported in (2010) 1 SCC 707, wherein the Honourable Supreme Court has held that "mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 of the IPC."

ii) Chitreshkumar Chopra vs. State reported in 2009 16 SCC 605, it is held by Honourable Supreme Court R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 that "abatement by a person is when a person instigate another to do something. Instigation can be inferred where the accused had by his acts or omission created such circumstances that deceased was left with no option except to commit suicide."

5. Heard the learned advocates for the respective parties and gone through the impugned judgment and order of the trial Court as well as the material on record.

5.1 Before advertng to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of

his innocence is further reaffirmed and strengthened by the trial Court.

5.2 In *Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others*, (2019) 2 SCC 752, the Apex Court has observed that, R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 "The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court".

5.3 Yet in another decision in *Chaman Lal v. The State of Himachal Pradesh*, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020, 2020 SCC OnLine SC 988 the Apex Court has observed as under:

"9.1 In the case of *Babu v. State of Kerala*, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject- matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P* (1975) 3 SCC 219, *Shambhoo Missir v. State of Bihar* (1990) 4 SCC 17, *Shailendra Pratap v. State of U.P* (2003) 1 SCC 761, *Narendra Singh v. State of M.P* (2004) 10 SCC 699, *Budh Singh v. State of U.P* (2006) 9 SCC 731, *State of U.P. v. Ram Veer Singh* (2007) 13 SCC 102, *S. Rama Krishna v. S. Rami Reddy* (2008) 5 SCC 535, *Arulvelu v. State* (2009) 10 SCC 206, *Perla Somasekhara Reddy v. State of A.P* (2009) 16 SCC 98 and *Ram Singh v. State of H.P* (2010) 2 SCC 445)

13. In *Sheo Swarup v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under: (IA p.

404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v.*

R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 State AIR 1954 SC 1, *Balbir Singh v. State of Punjab* AIR 1957 SC 216, *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, *Khedu Mohton v. State of Bihar* (1970) 2 SCC 450, *Sambasivan v. State of Kerala* (1998) 5 SCC 412, *Bhagwan Singh v. State of M.P.*(2002) 4 SCC 85 and *State of Goa v. Sanjay Thakran* (2007) 3 SCC 755)

15. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) "(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In *Ghurey Lal v. State of U.P* (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para

20) "20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P. v. Banne* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) "(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in *Dhanapal v. State* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 9.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v.

CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636)." (emphasis supplied) 9.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

9.4 In the recent decision of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappraisal of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappraise the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In Sambasivan v. State of Kerala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappraisal of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the

learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.

While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416) "8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala* (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P.* AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 80910) "5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that

the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

6. In the aforesaid backdrop, if the evidence of PW -5 - Yuvrajsinh at Exh. 39, who is a complainant and son of the deceased is perused, he has supported the complaint and the case of prosecution. However, he is not an eye witness and at the time of incident he was at Lalpur Chowkdi and was informed by his cousin Rajdipsinh about the incident. He has deposed that after receiving call from his cousin, he R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 reached to the hospital, where deceased was admitted in burns ward and at that time, deceased has told him that accused were harassing her and quarreling with her and therefore, because of such harassment she has committed suicide. Therefore, complainant is not an eye witness to the actual incident.

6.1 If the deposition of PW-2 Kanchanba, who is sister in law of the deceased and residing at same locality where deceased and accused were residing, has in her cross-examination stated that deceased was suffering from TB since last 6-7 years and that husband of the deceased was suffering from HIV and was admitted in the hospital since last one month and that deceased was short tempered. She has also admitted that deceased was very sensitive and was taking small matters very

seriously.

6.2 If the deposition of PW-3 Shaktisinh, Exh. 39 is referred to, who is the younger son of the deceased and brother of the complainant. He has stated in his cross examination that at the time of incident he was sleeping and only when some neighbor has informed him, he rushed to the place of incident. He has further stated that when he reached to the accused's house, deceased was burnt and was not able to walk or talk and that deceased has not informed anything about the incident to the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 police. So, this witness is also not the eyewitness of the incident.

6.3 In the deposition of PW - 4 at Exh. 41 - Jayendrasinh Pratapsinh, who is brother in law of the deceased. He has stated in his deposition that because of hearing some loud talk, he reached to the place of incident and that when he reached, deceased was lying in burnt condition in the kitchen of the accused. In his cross examination, he has stated that deceased and her family have shifted to the Jamnagar before about 4 months because of ill health of his brother and his brother - husband of the deceased was hospitalized since last one month. He has also admitted that he got the information about whole incident from other persons and he has no personal knowledge about the same.

6.4 PW-7 is the Executive Magistrate - Vinay Babulal Dhruv at Exh.52, who has recorded dying declaration of the deceased. He has stated procedural aspect of recording dying declaration in his deposition. Considering the deposition it appears that he has maintained procedure of recording dying declaration but considering the evidence of the son of the deceased - Shaktisinh, he has stated that when they reached the hospital, it was around 10:00 am, so there is no possibility of recording the dying declaration at 9:48 am. Moreover, as per the PM R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 report, deceased has suffered 95 to 97% burns. Under the circumstances, mental condition of the patient can never be said to be stable, though doctor may have endorsed on the yadi that deceased was in fit state to give dying declaration. A person who has been burnt to the extent of 97% must be in lot of agony and pain, it cannot be said that the person is in fit state of mind while deposing the dying declaration. As such this case cannot be sustained only on the basis of dying declaration.

6.5 The PW - 1 - Dilipbhai Punjabhai, who is panchwitness has deposed that he has only signed the panchnama, otherwise he did not know the details of panchamam and he has also deposed that police has not collected any evidence or mudamal in his presence and therefore, his evidence cannot help the prosecution to prove the case against the accused.

6.6 Prosecution has examined PW - 6 Investigating Officer and PW No.7 Bapalal Lakhubha. Both of them have investigated the offence. They have described procedural aspect in their deposition and produced documentary evidence. As such, in his cross examination PW 8 has admitted that he has not participated in any investigation and only took note in station diary.

R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 6.7 Thus, considering the above, it appears that there are contradictions in the depositions of the witnesses and that complainant

himself or any other witness are not eye witness to the incident in question. More particularly, complainant is a hearsay witness and he has registered the complaint only on such hearsay. Further, there is nothing on record, except bare words that the accused were harassing or ill treating the deceased. Though incident has happened in residential area, no eye witness has been examined by the prosecution and therefore, it cannot be said that accused - respondents have instigated the deceased to take such extreme step. At this juncture, if the decision of the Apex Court in *M. Arjunan v. State*, AIR ONLINE 2018 SC 846 is referred to, the Court has held as under:

"8. The essential ingredients of the offence under Section 306 IPC are (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC."

6.8 For confirming charge under Section 306 of the IPC, the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 accused should have committed any of the overtacts adumbrated in Section 107 of the IPC. Considering the scope and ambit of Sections 306 & 107 of the IPC, the Hon'ble Apex Court in *Madan Mohan Singh V. State of Gujarat* and another reported in 2010 (8) SCC 628 was pleased to hold as follows:

"12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note."

6.8 In the case on hand also, as discussed herein above, there is nothing on record to show or suggest that the accused had instigated the deceased to commit suicide. Moreover, there is nothing on record capable of suggesting that the accused intended by such an act to instigate / abet to commit suicide.

6.9 Thus, on re-appreciation and reevaluation of the oral and the documentary evidence on record, as well as considering the settled legal position, it transpires that the prosecution has failed to prove the case against the accused beyond reasonable doubt inasmuch as the ingredients of the offence alleged are R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 not fulfilled. The Court has gone through in detail the impugned judgment and order and found that the learned trial Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Hence, the trial Court has rightly acquitted the accused.

6.10 It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463 be made in this regard. In the said case, it has been observed as under:-

"6. This Court has held in *Kalyan v. State of U.P.*, (2001) 9 SCC 632 :

"8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court.

Normally the views of the trial court, as to the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In *Kali Ram V. State of Himachal Pradesh*, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 conviction of the innocent, of course, is always there in any system of the administration of criminal justice Such a risk can be minimised but not ruled out altogether It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is

extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:

"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

"9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."

8. In Arulvelu and another versus State reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

6.11 As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned R/CR.A/1553/2016 CAV JUDGMENT DATED: 02/05/2023 trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

7. In view of the aforesaid discussion and observations, in the considered opinion of this Court, the prosecution has failed to bring home the charge against accused for want of sufficient material. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, the appeal stands dismissed. Impugned judgment and order dated 15.07.2016, passed in Sessions Case No. 45 of 2012 by the learned 6 th Additional Sessions Judge, Jamnagar, recording the acquittal is confirmed. Bail bond, if any, shall stand cancelled. R&P, if received, be transmitted back forthwith.

Sd/-

(RAJENDRA M. SAREEN,J) DRASHTI K. SHUKLA