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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 09th May, 2024

+ CRL.A. 537/2003

STATE

..... Appellant

Through: Mr. Hemant Mehla, APP for the State
with Insp. Suneel Siddhu, P.S.
Mangolpuri.

versus

BHARAT SINGH

..... Respondent

Through: Mr. Jaiesh Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J. (ORAL)

1. The present appeal challenges the judgment dated 09.12.1990 passed by learned Additional Sessions Judge, in Sessions Case no. 720/1996, arising out of FIR No. 203/1989, under Sections 306/498A of the IPC, registered at P.S. Mangolpuri.
2. The present FIR was registered on the statement of Vijay Singh recorded before the SDM, Punjabi Bagh, Ex.PW-5/A, wherein it was alleged that he had married his daughter, Anandi Devi, with the present respondent on 13.04.1989. It was alleged that his daughter had come from her matrimonial home after one week and during that period she told his wife



Smt. Rajeshwari Devi/PW-1 that her husband i.e., the respondent used to say to her “*JAB TERE HATHON KI MEHANDI UTAR JAYEGI TO MAIN TERI PITAI KARUNGA*” and said that he had affairs with 3 to 4 girls and he also tried to strangulate her in her matrimonial house. On receiving the information from the respondent’s neighbourhood about her daughter being ill, he reached the Mangolpuri residence and found her daughter dead and the body was found on the bed.

3. On the aforesaid statement, case under Section 304B of the IPC, was registered against the respondent. After completion of investigation, chargesheet in the present case was filed before the learned Trial Court. The learned Trial Court framed charges under Sections 498A/306 of the IPC and after the conclusion of the prosecution evidence, the present respondent was acquitted.

4. The learned APP for the State submits that the learned Trial Court had wrongly rejected the testimony of PW-1 and PW-5, the parents of the deceased who fully supported the case of the prosecution and it was rejected mainly on the basis of the lacunae/lack of proper investigation on the part of PW-10, Investigating Officer of the case. The learned APP for the state also submitted that the trial court wrongly rejected the statement of PW-5 on the basis that the statement of PW-5 was not consistent with the statement of his wife (PW-1). It was further submitted that the trial court had erred in rejecting the statement of PW-9 (SDM) who had recorded the statement of the father of the deceased and ordered for registration of the case under section 304B IPC. It was further submitted that the trial court did not consider the fact that there was sufficient evidence on record regarding



the cruelty and causing abetment to the deceased to commit suicide.

5. On the other hand, learned counsel for the respondents submits that the impugned judgment is well reasoned. It is submitted that the learned Trial Court have minutely examined the testimony of all the relevant witnesses and material on record and thereafter has passed the judgment of acquittal. It is further submitted that the law with respect to judgment of acquittal is that the same would not be interfered with unless the same suffers from perversity on account of incorrect appreciation of facts and law.

6. Heard the parties and perused the record.

7. The learned Trial Court while acquitting the present respondent has observed as under:

“31. Strangly in the final inquest report Ex.PW9/G, S.D.M. directed to register a case u/s 498A I.P.C. against accused Bharat Singh and his parents. The final report is dated 29-12-89, but the challan was put in Court for trial on 10-8-89 and was committed to Court of Sessions u/s 304B I.P.C. In the final report Ex.PW-9/G S.D.M. no where opined that case u/s 304B I.P.C. was also made out against accused or his parents.

32. The other witnesses are formal in nature. P.W.4 ASI Narain Singh had recorded F.I.R., copy of which is Ex. PW4/A, P.W.6, Record Clerk proved the postmortem report which is Ex.PW6/A. P.W.7.H.C. Vikram Singh had taken photographs of the scene of occurrence and the photographs are Ex.PA1, PB1, PC1, PD1 and PE1. P.W.8 is Cont. Jabir who had taken viscera and blood sample to C.F.S.L. Lodhi Colony. The report of C.F.S.L. is Ex.C-1.

33. I have heard Ld. Addl. P.P. and Ld. defence counsel.

34. Ld. defence counsel has contended that the prosecution case mainly was based on the statement of P.W.1 and P.W.5, parents of deceased and there were material contradictions in the statements of both P.Ws. It is submitted that the main allegation leveled against accused was that deceased told her parents that her husband was saying ABHI TERE HATHON MEHANDI LAGI HAI JAB UTAR JAYGI



TO MAIN TERI PITAI KARUNGA. and neither P.W.1 and P.W.5 were sure as to when deceased told them this fact. It is pointed out that according to his complaint made to the police Ex.PW-5/A by P.W.5 deceased used to tell everything to P.W.1 and not directly to him, whereas in the Court P.W. 5 deposed that he was informed about the threat given by accused by the deceased herself. It is pointed out that in cross-examination P.W. 5 deposed that deceased Anandi had visited his house for the first time only after 4/5 days, but did not stay in the night and thereafter Anandi never visited him. Whereas according to P.W.1 Anandi with accused had come to her house after two days and on that occasion Anandi had told her about the threat being extended by accused. It is also pointed out that according to P.W.1, the couple had stayed for one night and then left for her matrimonial house. It is pointed out that to cover up the exact day when Anandi had told about the threat given by the accused, P.W. 1 in her cross-examination asserted that Anandi had made such complaint on next visit also, whereas according to P.W. 5 Anandi never visited them. Relying on these contradictions, it is submitted that the very basis of the threat was falsified. On the other hand, it is contended by Ld. Addl. P.P. that the contradiction were very minor in nature and should be over looked. In my opinion the contradictions cannot be over looked because the statement of P.W. 1 and P.W. 5 as made in the Court are full of improvements. In A.I.R. 1981 SC 1223, it was held that an interested witness cannot be relied on when he has made improvement in material particulars and the Court should look for assuring and reliable circumstances for their testing in the case of accused. In the present case also P.W.1 and P.W.5 are parents of deceased and certainly the improvements made by them in Court have to be judged with extra precaution more particularly when the improvements and variations made by both P.W.1 and P.W.5 are of some facts, which can be product only of due deliberations.

35. Neither P.W. 1 nor P.W. 5 have thrown any light on the circumstances which prevailed immediately preceding the death of Anandi Dev. P.W.3 Sagir Ahmad has deposed that father-in-law of Anandi had contacted P.W. 5 and had informed that accused was beating Anandi. P.W. 5 also has corroborated him. If it be presumed that Ananid was beaten up by accused on 9-5-89 even that it remains in dark as to what prompted Anandi to commit suicide. Anandi was educated and she did not leave any suicide note behind. In a case where a wife dies in suspicious circumstances in her husband's house it is in-



variable a matter of considerable difficulty to ascertain the precise circumstances in which the incident occurred. As the incidence takes place in the home of her husband, material witnesses are usually, the husband and his parents or other relatives of the husband staying with them. Ld. defence counsel has contended that Anandi committed suicide because she was married to accused against her wishes. For this reason a suggestion was put to P.W. 5 that Anandi had love affairs with another boy Mukesh whom she wanted to marry. That suggestion was promptly denied by P.W. 5, but the fact remains that the possibility of deceased having an affair and dis-liking of accused cannot be dismissed so lightly. After all Anandi committed suicide within one month of her marriage. Except that she was beaten up and threatened by accused that she will be beaten up when her henna would face away cannot be such a compelling circumstances which would compel Anandi to commit suicide. There is no evidence on record that there was any proximate cause for Anandi to end her life on 12-5-89.

36. In view of the evidence discussed above, can it be held that accused instigated Anandi to commit suicide. No doubt if there is a situation created by husband by his willful conduct which he knows would derive the woman to commit suicide then husband can be held guilty for offence punishable u/s 306 I.P.C. But what would constitute instigation for that commission of an offence would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation.

37. In the present case, there is nothing in the evidence whereby it could be held that accused by his willful conduct created such a situation in which deceased was left with no option, but to commit suicide. The beatings given by accused and threat extended by him even if be presumed to be true still they do not indicate that accused had instigated Anandi to commit suicide. As observed above possibility cannot be ruled out that Anandi was married to accused against her wishes and fuel was added to fire by threat given by accused and then Anandi committed suicide. The act of accused cannot be held to be sufficient to instigate Anandi to commit suicide.



38. Ld. defence counsel has pointed out that several infirmities in the investigation of this case like recording of incomplete statement of P.W.1 by P.W. 10 and recording supplementary statements after lapse of about two months to add demand of dowry articles and other contradictions. In my opinion the other contradictions need not be discussed because act of the accused in no manner amounts to abetment to Anandi to commit suicide. In my opinion I.O. under pressure recorded statements of witnesses to later on to implicate accused.

39. If accused is not liable for abetting suicide committed by Anandi, can he be held guilty for offence punishable u/s 498A I.P.C. is the question which remains to be answered.

40. The allegations of demand of dowry apparently are false because they were not leveled at the first opportunity available to complainant and his wife. Therefore, the only allegation against accused remains that he subjected Anandi to cruelty within the meaning of Section 498A I.P.C. Explanation (a). It has been held in a number of cases that every type of cruelty is not covered by Explanation (a) because cruelty has not definable parameters. It involves act, the result of which caused hurt and often times agony to the opposite party, be it mental or physical. The statement of P.W. 2 is relevant for this purpose. According to him on 11-5-89 he had seen accused and Anandi quarrelling and accused was pulling Anandi towards the side of his house. If deceased could quarrel with accused at a public place then certainly if accused at some time had given beatings cannot be held guilty for subjecting her to cruelty. The conduct of accused cannot be held to be of such a nature as was likely to derive Anandi to commit suicide or to cause grave injury or danger to life, limb or health of Anandi. The marriage lasted only for about one month. During that one month there is allegations of beating on one or two occasions as deposed by P.W.1 and P.W.5. That beating by no stretch of imagination can be termed as cruelty within the meaning of Section 498A I.P.C.

41. But the fact remains that Anandi committed suicide. The obvious reason for her committing suicide appears to be that she was not happy with accused and she was in love with another boy. Anandi was quite young and people of her age can take extreme step of committing suicide if their wishes are not fulfilled, more particularly when they are married to a person of their disliking, when having affair



with another person. In my opinion in the present case this exactly has happened and accused cannot be blamed for suicide committed by Anandi in desperation.

42. For reasons stated above, I acquit accused for offence punishable u/s 498A/306 I.P.C. His bonds are cancelled. Surety discharges. File be consigned to record room.”

8. Section 306 of the IPC provides as under:

“306. **Abetment of suicide.**— If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9. The Hon’ble Supreme Court in **Prabhu v. State rep by the Inspector of Police and Another, 2024 SCC OnLine SC 137**, has held and observed as under:

“15. In a recent judgment of this Court in *Kamalakar v. State of Karnataka* in **Criminal Appeal No. 1485 of 2011 [decided on 12.10.2023]**, one of us (Vikram Nath J.) explained the ingredients of Section 306 IPC. The Court has held as follows:

“8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In *Ramesh Kumar v. State of Chhattisgarh*, this Court has analysed different meanings of “instigation”. The relevant para of the said judgment is reproduced herein:

“20. *Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily*



and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

8.4. The essentials of Section 306 IPC were elucidated by this Court in *M. Mohan v. State*, as under:

“43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in *Amalendu Pal alias Jhantu v. State of West Bengal* in the following paragraphs:

“12. Thus, this Court has consistently taken the view that before



holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

16. On a perusal of the above, and relying upon this Court's previous judgments discussing the elements of Section 306 IPC, the following principles emerge:

17. Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [Swami Prahaladdas v. State of M.P., 1995 Supp (3) SCC 438, Paragraph 3; Sanju v. State of M.P., (2002) 5 SCC 371, Paragraph 12]

18. In order to constitute ‘instigation’, it must be shown that the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option



except to commit suicide. The words uttered by the accused must be suggestive of the consequence [*Ramesh Kumar v. State of Chhatisgarh*, (2001) 9 SCC 618, Paragraph 20]

19. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. [*Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, (2009) 16 SCC 605, Paragraph 20]

20. There must be direct or indirect acts of incitement to the commission of suicide. The accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [*Amalendu Pal v. State of West Bengal*, (2010) 1 SCC 707, Paragraph 12-14]

21. The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [*Madan Mohan Singh v. State of Gujarat*, (2010) 8 SCC 628]”

10. In view of the aforesaid legal position, the facts in the present case do satisfy the ingredients of offence under Section 306 of the IPC. The material that has come on record with respect to the present respondent was that as per PW5, he used to beat the deceased and say to her “*JAB TERE HATHON KI MEHNDDI UTAR JAYEGI TO MAIN TERI PITAI KARUNGA*”. It is pertinent to note that the marriage lasted for about one month. The learned Trial Court has correctly observed that there was no evidence on record with regard to any proximate cause for Anandi to end her life. Apart from that, the material discrepancies noted by the learned Trial Court also creates doubt in the present case, benefit of which shall go to the respondent. Similarly, the learned Trial Court further observed that the only evidence with respect to Section 498A of the IPC was that PW-2 had seen the respondent and the deceased quarreling with each other and the respondent pulling the deceased towards the side of his house. This isolated event



cannot be termed as cruelty within the meaning of Section 498A of the IPC.

11. At this stage, since the present appeal is against acquittal, the powers of the appellate Court, in such an appeal under Section 378 of the Cr.P.C., is to be exercised only where it is shown that the findings in the judgment are incorrect or perverse in law. The approach of the appellate Court in an appeal against acquittal has been dealt with by the Hon'ble Supreme Court in **Murlidhar alias Gidda & another v. State of Karnataka, AIR 2014 SC 2200: (2014) 5 SCC 730.**

12. The Hon'ble Supreme Court in **Murlidhar (supra)**, after referring to various decisions, has culled out the principles relating to appeals from a judgment of acquittal. It was observed that the Hon'ble Supreme Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

“12.(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappraisal and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view



taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

13. The same view has been reiterated by the Hon’ble Supreme Court recently in **Basheera Begum v. Mohd. Ibrahim & others, (2020) 11 SCC 174**, as follows:

“190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In *Sadhu Saran Singh v. State of U.P.*, this Court observed that an appeal against acquittal has always been on an altogether different pedestal from 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. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”

14. Moreover, the Hon’ble Supreme Court in **N. Vijayakumar v. State of Tamil Nadu, (2021) 3 SCC 687**, has observed that an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence and *secondly*,



the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the learned Trial Court and held that 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 learned Trial Court. The observations of the Hon'ble Supreme Court are as follows:

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(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 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.”

21. Further in the judgment in Murugesan [Murugesan v. State, (2012) 10 SCC 383 : (2013) 1 SCC (Cri) 69] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court not to reverse the acquittal to that of the conviction.”

15. Therefore, in view of the aforesaid discussion, there is no illegality, perversity, or mis-appreciation of facts in the impugned judgment passed by the learned Trial Court.
16. The present appeal is dismissed and disposed of accordingly.
17. Pending application(s), if any, also stand disposed of.
18. Bail bonds stand discharged.
19. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

MAY 09, 2024/bsr