IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 167 of 1998

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI Sd./-

and

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd./-

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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**

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STATE OF GUJARAT
Versus
ANTARBA W/O ABHUJI PRATAPJI VAGHELA

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Appearance:
MR MANAN MEHTA, PUBLIC PROSECUTOR for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1
MS URMILA N DESAI(5609) for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE NIRZAR S. DESAI**
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 22/05/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE NIRZAR S. DESAI)

1. By way of this appeal, the appellant-State seeks to assail the the judgment and order dated 31.12.1997, passed in Sessions

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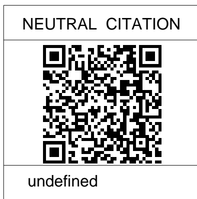

Case No. 12 of 1996, whereby, the learned Addl. Sessions Judge, Ahmedabad (Rural), at Gandhinagar (in brief, 'Trial Court'), acquitted the original accused-opponent, herein, namely Antarba Abhuji Pratapji Vaghela of the offence punishable under Sections 498(A) and Section 302 of the Indian Penal Code, 1860 ('IPC' in Short).

2. The brief facts of the case of the prosecution, as was laid down before the Trial Court, reads thus;

According to the prosecution, the present Opponent-accused, who happened to be the mother-in-law of the deceased – Navuba, used to harass the deceased - Navuba over the household work and also used to mentally torture her under the one pretext or the other.

2.1 It is, further, the case of the prosecution that on the date of the alleged incident, i.e. on 26.02.1994, when the deceased – Navuba and the Opponent-accused were alone at their home at Village: Jalund, in the morning at about 09:30 a.m., the opponent - accused picked – up quarrel with the deceased and then, allegedly poured kerosene on her and set her ablaze.

2.2 On account of that the deceased – Navuba received serious burn injuries and therefore, firstly, she was taken to Civil Hospital, Gandhinagar, and thereafter, she was taken to Civil Hospital, Ahmedabad, where, she gave her complaint, which was registered as I-C.R. No. 24 of 1994 with Pethapur Police Station. While

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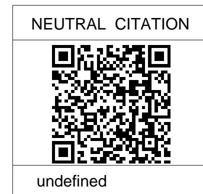

undergoing treatment at Civil Hospital, Ahmedabad, the injured – Navuba breathed her last on 02.03.1994.

3. In pursuance of the complaint lodged by the complainant with Pethapur Police Station for the offence under sections 498(A) and 302 of the IPC, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence and obtained FSL report, for the purpose of proving the offence. After having found sufficient material against the opponent-accused, charge-sheet came to be filed in the Court of learned JMFC, Gandhinagar. As the said Court lacked jurisdiction to try the offence, it committed the case to the trial Court, as provided under section 209 of the Code of Criminal Procedure, 1973.

4. Upon committal of the case, the trial Court framed charge at Exhibit-4, against the opponent-accused for the aforesaid offences. The opponent-accused pleaded not guilty and claimed to be tried.

5. In order to bring home the charge, the prosecution examined nine witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in Paragraph-5 of the impugned judgment and order.

6. On conclusion recording of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the opponent-accused, so as to

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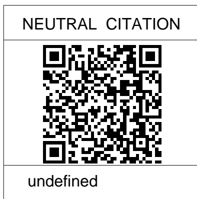

obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the opponent-accused denied all incriminating circumstances appearing against her as false and further stated that she is innocent and a false case has been filed against her.

7. We have heard learned APP Mr. Mehta, for the appellant – State and have minutely examined oral and documentary evidences adduced before the concerned Trial Court.

8. Learned APP, Mr. Mehta, appearing for the appellant-State mainly submitted that when the deceased – Navuba, herself, named the present opponent-accused in her dying declaration as the perpetrator of the crime, there was no reason for the trial Court to acquit the opponent-accused. It was submitted that the deceased – Navuba in her complaint given before PW-9, Ambalal Vastabhai Parmar, as well as in her DD given before the Executive Magistrate-Vinod Dhediyabhai Patel, PW-8, clearly named the opponent – accused and therefore, the trial Court committed a grave error by acquitting her. It was submitted that there are four different versions of the incident in question given by the deceased – Navuba before four persons, i.e. (1) Gandaji Baldevji Vaghela-PW-1, (2) Dr. Navinchandra Manilal Patel – PW-2, (3) Vinod Patel-PW-8, the Executive Magistrate, and (4) Ambalal Vastabhai Parmar-PW-9, Head Constable and thereby, it was submitted that before Gandaji-PW-1 and Dr. Patel- PW-2, the deceased-Navuba did not name the accused, whereas, in the DD given before Vinod Patel-PW-8 and the complaint given before Ambalal Parmar-PW-9,

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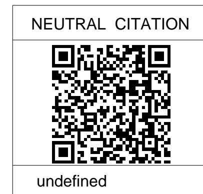

the deceased – Navuba specifically stated that the opponent-accused had poured kerosene on her and had set her ablaze. Thereby, it was submitted that taking into consideration the overall facts and circumstances of the case, the trial Court has committed an error by acquitting the opponent-accused. It was also submitted that the trial Court also committed an error by relying on the fact that the FIR was lodged after 11 hours of the alleged incident.

8.1 By making the above submissions, it was prayed that this Court may quash and set aside the impugned judgment and order passed by the trial court.

9. We have heard the learned APP and also perused the material produced on record and we find that there is no eye-witness of the incident in question. The deceased – Navuba in her complaint given before Ambalal Parmar – PW-9 has stated that after the opponent – accused poured kerosene and set her ablaze, she ran out of the house in burning condition and started screaming and on account of that the people residing in the neighbourhood gathered there and one Sukha Kaka and one Hamir Kaka doused the fire. Here, it is pertinent to note that none of them were examined as a witness by the prosecution and only one Gandaji Baldevji was examined as PW-1.

9.1 Gandaji Baldevji-PW-1, in his examination-in-chief, Exhibit-10, stated that when he reached the place of incident, he saw the deceased-Navuba coming out of her house in burning condition

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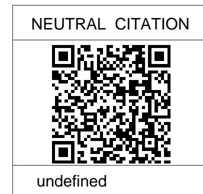

and there was no one else present at her house and therefore, PW-1 had asked some boys to go to agricultural filed and to inform the mother-in-law of the deceased, i.e. the present opponent-accused, and others to come home. Thereafter, Gandaji Baldevji-PW-1 and others took the deceased-Navuba to Civil Hospital, Gandhinagar, and from there, the deceased was taken to Civil Hospital, Ahmedabad, by her relatives. Gandaji-PW-1, in his cross-examination, stated that when he inquired from the deceased-Navuba about the occurrence of the incident, he was told by the deceased that, while she was preparing tea, she accidentally caught fire and sustained burn injuries. According to Gandaji-PW-1, when the alleged incident took place, the deceased-Navuba was alone at her house and no one else was present with her. Thus, if, the version of Gandaji-PW-1 is perused, it becomes clear that he is not an eye-witness and he has not seen the occurrence with his own eyes, but, the fact remains that he stated that when he reached the place of incident, he saw the deceased-Navuba coming out of her house in burning condition. In short, the deposition of Gandaji-PW-1 indicates that when the alleged incident took place, the opponent-accused was not present at her house and in fact, she was in her agricultural field and therefore, PW-1 had to ask some boys to inform the opponent-accused about the alleged incident. Nonetheless, the fact remains that Gandaji-PW-1 was one of the persons, who saw the deceased-Navuba running out of her house in burning condition.

9.2 Now, if, we examine the evidence of Dr. Navinchandra Patel-

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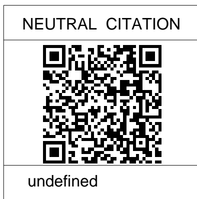

PW-2, Exhibit-11, who had examined the deceased, when she was brought to Civil Hospital, Gandhinagar, in his examination-in-chief stated that on 26.02.1994 at about 10:15 a.m., while he was on the duty, the deceased-Navuba was brought before him with burn injuries and when he inquired from the deceased-Navuba about the injuries, he was told that she had accidentally caught fire, while preparing tea, and had sustained burn injuries. Dr. Patel-PW-2, further, stated that considering the nature of injuries sustained by the deceased-Navuba, on the very same day, at about 11:00 a.m., the Full Time Surgeon of the Civil Hospital, Gandhinagar, referred the deceased-Navuba to Civil Hospital, Ahmedabad. So, the evidence of Dr. Patel-PW-2 also does not support the case of the prosecution, with regard to the presence of the opponent-accused at the place of incident, at the time of its occurrence, and that she was set on fire by the opponent-accused.

9.3 Considering the evidence of Gandaji-PW-1 and Dr. Navinchandra Patel-PW-2, who are independent witnesses and who had an occasion to interact with the deceased-Navuba soon after the alleged incident took place, i.e. in the morning at about 09:30 a.m. and at 10:15 a.m. respectively, both these witnesses were given identical version of the incident by the deceased-Navuba, herself, i.e. she accidentally caught fire, while preparing tea and sustained burn injuries.

9.4 Insofar as, the evidence of the other two witnesses, i.e. Vinod Patel-PW-8, Exhibit-34, and Ambalal Paramar-PW-9,

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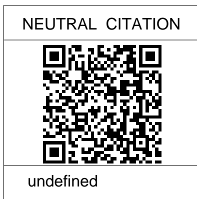

Exhibit-38, who were discharging duties as the Executive Magistrate and Police Constable respectively, at the relevant point of time, are concerned, the trial Court did not believe the same, since, as per the deposition of Gandaji-PW-1, when the alleged incident took place, the opponent-accused was not present at her home and instead, according to PW-1, the opponent-accused was at her agricultural field. Further, Nanjibhai Badiyabhai Kalasava-PW-7, Exhibit-29, who was the IO, in his examination-in-chief as well as in his cross-examination stated that when the alleged incident took place, the opponent-accused was not present and in fact, at the time of occurrence, the deceased-Navuba was alone at her home.

9.5 Considering the evidence of the aforesaid key-witnesses, coupled with the fact that the father of the deceased-Navuba, namely Arjanji Karnaji Chavda-PW-6, Exhibit-27, did not support the case of the prosecution and turned hostile, that would indicate that the trial Court has taken into consideration all the facts and circumstances, as well as the material produced before it, and came to the conclusion that, at the time of occurrence of the incident in question, the opponent-accused was not present at her house, which stands corroborated by the evidence of Gandaji-PW-1 and Dr. Patel-PW-2, who are independent witnesses, and therefore, we do not see any reason to interfere with the judgment and order passed by the trial Court.

10. It is a cardinal principle of criminal jurisprudence that in an

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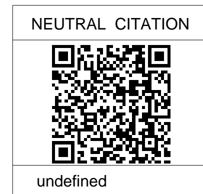

acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP for the applicant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

11. In the case of '***Ram Kumar v. State of Haryana'***, reported in AIR 1995 SC 280, Supreme Court has held as under:

> *"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."*

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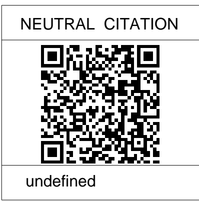

12. As observed by the Hon'ble Supreme Court in the case of '***Rajesh Singh & Others vs. State of Uttar Pradesh',*** reported in (2011) 11 SCC 444 and in the case of '***Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh****',* reported in (2011) 6 SCC 394, while dealing with the 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 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.

13. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

14. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly ***dismissed***. Registry is directed to send back R&P, if any, to the concerned trial Court.

Sd./-
(NIRZAR S. DESAI,J)

Sd./-
(HASMUKH D. SUTHAR,J)

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