NEUTRAL CITATION

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 435 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI 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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THE STATE OF GUJARAT
Versus
RAMESHBHAI KARSHANBHAI GOHIL & ORS.

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Appearance:
MR DHAWAN JAYSWAL, ADDITIONAL PUBLIC PROSECUTOR for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 4
BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1,2,3
MR VIRAT G POPAT(3710) for the Opponent(s)/Respondent(s) No. 1
MS RAJAL D MANDORA(12341) for the Opponent(s)/Respondent(s) No. 2,3

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Date : 15/05/2024

ORAL JUDGMENT

1. By way of this Appeal, the Appellant – State is aggrieved by the judgment and order of acquittal

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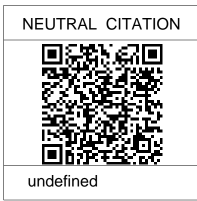

dated 30.03.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.5, Jamnagar in Sessions Case Nos.113 of 2006 and 114 of 2006 whereby the respondents were acquitted for the offences punishable under Sections 498(A) read with Sections 306 and 114 of the Indian Penal Code.

2. The case of the prosecution is as under :-

2.1. The complainant – Nanjibhai Arjanbhai Dhokia registered a complaint with 'B' Division Police Station, Jamnagar City stating that his daughter got married with the (husband) accused No.1–Rameshbhai Karshanbhai Gohil about two years prior to the date of incident. The respondent Nos.2 and 3 are the sister-in-law and mother-in-law respectively of the deceased. It is alleged that after six months of the married life, the respondents started torturing mentally and physically the victim and as result of which, she committed suicide by pouring kerosene on her body and setting herself on fire.

2.2. On the basis of the complaint filed, the investigation commenced. Charges were framed

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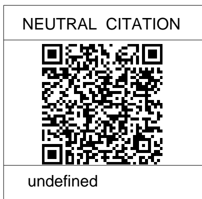

against all the original accused in the Court of the learned Judicial Magistrate First Class. Since it was a Sessions triable case, the learned Judicial Magistrate First Class committed the case to the Court of Sessions.

2.3. At the time of the trial, the prosecution examined the following witnesses :-

Particulars	Exh.
PW-1 Nanjibhai Arjanbhai Dhokia (Father of the deceased)	16
PW-2 Dr. Nilesh Prabhakar Trivedi	19
PW-3 Manjuben Nanjibhai (mother of the deceased)	24
PW-4 Kesarben Devjibhai	25
PW-5 Arjanbhai Gordhanbhai	26
PW-6 Dr. Prithvirajsinh Chandrasinh	28
PW-7 Gambhirsinh Ramsinh Jadeja	34
PW-8 Gandubhai Gokalbhai Sakariya (Investigating Officer)	40

The prosecution also relied upon various documentary evidence, some of them are :-

Particulars	Exh.
Original Complaint	17
Receipt for handing over of the body	18

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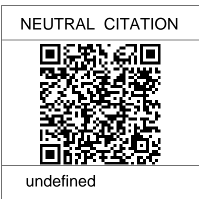
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Particulars	Exh.
Yadi written by Dr. Nilesh Trivedi, the treatment papers as also the provisional Death Certificate	20
The Patient Card prepared by Dr. Nilesh Trivedi	21
Panchnama of the place of incident	22
Inquest Panchnama	23
Post Mortem Report	29
Yadi forwarding the Post Mortem Report	30
Special Report	38
Original Copy of the Janva Jog Entry No.356 of 2005	39
Yadi forwarding the Inquest Panchanama	42
Initial Report given by the FSL Officer regarding the place / scene of incident	45
Dying Declaration of the deceased (Tentative)	47

2.4. At the end of the trial, further statement of the accused under Section 313 of the Code of Criminal Procedure was recorded in which the respondent/s pleaded not guilty and stated that they have been falsely implicated in the offence. Thus, after recording the further statement of the accused and hearing the arguments of both the sides, the learned Additional Sessions Judge passed the impugned judgment and order. Being aggrieved by the same,

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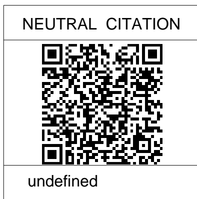

the present Appeal has been filed by the State, as aforesaid.

3. Learned Additional Public Prosecutor Mr. Dhawan Jayswal for the appellant – State has taken this Court to the medical evidence and has submitted that the presence of the accused is proved in the commission of the crime. It is further submitted that learned Judge has erred in discarding the evidence of the complainant, whose evidence gets corroborated from the First Information Report which was lodged after the incident. It is also submitted that the learned Judge has failed to appreciate the evidence of the PW-1, father of the deceased (the complainant). In addition, the evidence of PW-2, the mother of deceased also establishes that the deceased was subjected to physical and mental torture. In addition, the evidence of PW-4, Arjanbhai (the grandfather of the deceased) also corroborates the aspect of physical and mental torture.

4. Learned Additional Public Prosecutor further submitted that the married life of the deceased was

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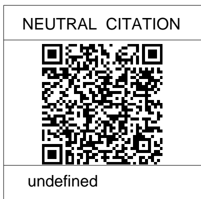

only of two years and therefore, the provisions of Section 113(A) of the Indian Evidence Act ought to have been appreciated. Further, the learned Judge has ignored the Dying Declaration of the deceased and has given the benefit of doubt to the respondents and because of the fear and terror of the respondents, the real facts of the case did not surface on record. It is further submitted that the prosecution has successfully proved its case beyond reasonable doubt. Considering the above, it is submitted that this is a fit case which requires interference of this Court and the judgment and order of the learned Judge qua the acquittal of the respondents should be upturned by this Court.

5. On the other hand, learned Advocate Mr. Virat Popat appearing for the respondent No.1 and learned Advocate Ms. Rajal D. Mandora appearing for the respondents No.2 and 3 have stated that there are several discrepancies in the evidence led by the complainant. It is submitted that the date of incident is 04.06.2005 and the deceased expired on 10.06.2005. Reliance is placed on the Inquest

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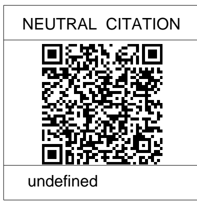

Panchnama below Exhibit 23. It is also submitted that when the incident occurred, the deceased was at her residence trying to light the stove and as she was unable to light the stove, the accident occurred and she got burnt. The same deposition has been given in the presence of the panchas. From the above, it is submitted that no case can be attributed to the respondents. It is further submitted that the deceased got burnt injuries to the extent of 85%, i.e. 2nd degree whereas the husband was 70% burnt. It is also submitted that husband took the deceased to the hospital and the dying declaration of the deceased reveals the said fact. This evidence of the Dying Declaration is required to be considered and the same should have precedence in the eyes of law. It is submitted that at the time of dying declaration recorded before the learned Executive Magistrate, Jamnagar, the deceased was in her senses and the same is also certified by the Doctor at Exhibit 54. In the said dying declaration, the deceased submitted that no such untoward incident had occurred and it was because of an accident while lighting the stove, the incident has taken placed. It is lastly submitted

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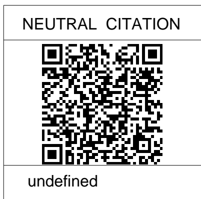

that no error has been committed by the learned Judge and Janva Jog Entry itself is to be treated on par, apart from the Dying Declaration. It is further submitted that the medical evidence adduced also does not support the case of the prosecution and therefore, this Court should not interfere in the well reasoned judgment and order of the learned Additional Sessions Judge.

6. In the case of **M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr,** reported in **(2006) 6 S.C.C. 39,** the Apex Court has narrated the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under :-

> "54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

7. Further, in the case of **Chandrappa Vs. State of Karnataka** reported in **(2007) 4 S.C.C. 415,** the Apex Court laid down the following principles :

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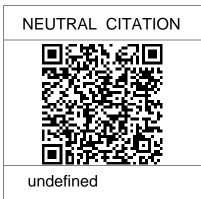

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge :

[1] An appellate Court has full power to review, re-appreciate 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 curtain extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasis 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.

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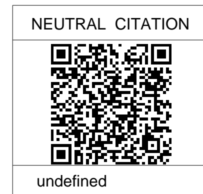

> [5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

8. Thus, it is a settled principle that while exercising appellate power, even 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, once the decision rendered by the competent Court is a plausible view and does not suffer from perversity.

9. Even in the case of **State of Goa V. Sanjay Thakran & Anr.** reported in **(2007) 3 S.C.C. 75**, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under :

> "16. From the aforesaid decisions, it is apparent that 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 and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the

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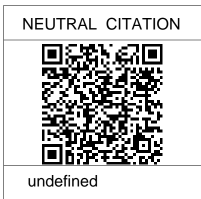

appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

10. Similar principle has been laid down by the Apex Court in the cases of ***S*tate of Uttar Pradesh Vs. Ram Veer Singh & Ors** reported in **2007 A.I.R. S.C.W. 5553** and in **Girja Prasad (Dead) by LRs Vs. State of MP** reported in **2007 A.I.R. S.C.W. 5589**. Thus, the powers, which this Court may exercise against an order of acquittal, are well settled.

11. In the case of **Luna Ram Vs. Bhupat Singh and Ors**, reported in **(2009) SCC 749**, the Apex Court in para 10 and 11 has held as under :-

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so-called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangulated. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the post-mortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a

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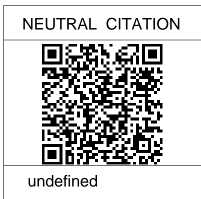

person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

12. Even in a recent decision of the Apex Court in the case of **Mookkiah and Anr. Vs. State, rep. by the Inspector of Police, Tamil Nadu**, reported in **AIR 2013 SCC 321**, the Apex Court in para 4 has held as under:-

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellant very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not

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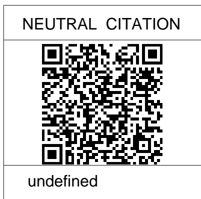

merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]."

13. It is also a settled legal position that in acquittal appeal, the appellate Court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy, reported in AIR 1981, SC 1417,** wherein it is held as under :-

"This Court has observed in Girija Nandini Devi V. Bigendra Nandini Choudhary (1967) 1 SCR 93:(AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

14. Similar principle has been laid down by the Apex Court in the case of **Shivasharanappa and Ors Vs. State of Karnataka,** reported in **JT 2013(7) SC 66.**

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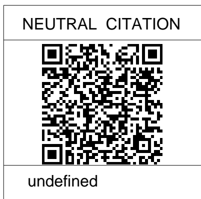

15. At this stage, this Court would like to refer to the following decisions of the Hon'ble Apex Court :-

a) **Mariano Anto Bruno v. Inspector of Police** reported in **AIR 2022 SC (Criminal) 1454** ;

b) **P.I. Babu v. C.B.I.** reported in **AIRONLINE 2024 SC 181**;

c) **Mohd. Abaad Ali v. Directorate of Revenue Prosecution Intelligence** reported in **AIR 2024 SC 1271.**

16. This Court also relies on the decision of the Hon'ble Apex Court in the case of **Mallappa and Others v. State of Karnataka** reported in **AIRONLINE 2024 SC 80** wherein it was held in Paragraph 36 as under :-

> "36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which comes into play while deciding an Appeal from acquittal could be summarized as :
> (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;

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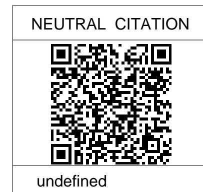

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

17. I have heard learned Advocates for the parties and perused the records of the case. This Court has gone through the evidence on record. The evidence of various witnesses have been taken into consideration. This Court has considered the Dying Declaration, the Janva Jog Entry as well as the Inquest Panchnama. The learned competent Court has considered the documentary evidence on record as well as the deposition of the witnesses. In light of the conclusion arrived at by the learned Sessions Court,

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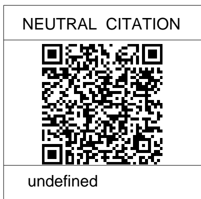

the accused are required to be acquitted from the charges levelled against the accused. The competent Court has discussed in its entirety the facts of the case especially at Paragraph 24 of the impugned judgment. Apart from that, the learned Additional Public Prosecutor for the appellant – State is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the competent court has ignored the material evidence on record. In that view of the matter and considering the ratio laid down in various judgments, I am in complete agreement with the reasons recorded by the learned trial court and in view thereof, the impugned Judgment is just, legal and proper and requires no interference by this Court.

18. The Appeal is devoid of merits and is dismissed accordingly. The judgment and order of acquittal dated 30.03.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.5, Jamnagar in Sessions Case Nos.113 of 2006 and 114 of 2006 is hereby confirmed. Bail bond, if any, shall stand

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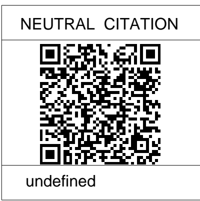

cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.

Sd/-

(VAIBHAVI D. NANAVATI, J)

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