

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 622 of 2005

- State of Chhattisgarh, through Police Station: Tarbahar, District Bilaspur.

---- Appellant

Versus

1. Anita, W/o B.M. Bhattacharya, aged about 52 years.
2. Animesh, S/o B.M. Bhattacharya, aged about 30 years.
3. Smt. Chandrani Vishwas, W/o Amit Narayan Vishwas, aged about 23 years.

**---- Non-appellants
Respondents**

For Appellants	:	Shri Vivek Sharma, Govt. Advocate
For Respondent	:	Shri Pawan Kesharwani, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

P. Diwaker, J

18/08/2017

1. In this appeal the appellant State has assailed the judgment of acquittal dated 4.3.2005 passed by the 1st Additional Sessions Judge, Bilaspur (CG) in Sessions Trial No.427/03 acquitting the respondents herein of the charges under Sections 306, 304(B), 498A, 34 of the Indian Penal Code (for short 'the IPC').
2. As per prosecution case, marriage of respondent No.2 herein was solemnized with deceased Sangeeta on 11.2.2000 and she died on 7.10.2003 at her matrimonial home in suspicious circumstances. Enquiry was conducted by the police and it was found that the deceased was

subjected to cruelty by her husband and his relatives for demand of dowry. After enquiry, FIR (Ex.P-11) was registered against the respondents herein on 10.1.2003 under Sections 498A & 306/34 IPC. On completion of investigation, charge sheet was filed against them under the aforesaid sections, however, the Court below framed the charges under Sections 498A, 304B & 306 of IPC. So as to hold the accused/respondents guilty, the prosecution has examined 9 witnesses. Statements of the accused/respondents were also recorded under Section 313 of the Code of Criminal Procedure, 1973 in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. They have also examined one defence witness namely Surendra Sharma (DW-1).

3. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, acquitted accused/respondents of the charges levelled against them. Hence this acquittal appeal by the State.
4. Learned counsel for the appellant submits that;
 - the trial Court has erred in law in acquitting the accused/respondents as there are ample evidence showing their involvement in the crime in question.
 - the trial Court has erred in law in disbelieving the statements of PW-2, PW-3 & PW-4.
 - once the witnesses have deposed that the deceased was subjected to cruelty for demand of dowry, there was no reason for the trial Court to disbelieve their statements.
 - ingredients of Section 304B, 306 & 498A of IPC are fully attracted to the case in hand as the deceased died an unnatural death that too within seven years of marriage and there was cruelty for demand of

dowry as well.

- that after recording a perverse finding the court below has acquitted the accused /respondents which is not permissible under the law.
5. On the other hand, counsel for the respondents has supported the impugned judgment of acquittal and submitted that
- there is no direct evidence showing involvement of respondents in the crime in question.
 - the trial Court has appreciated the entire evidence with greater degree of caution and only then the finding of acquittal has been arrived at.
 - the view taken by the trial Court is one of the plausible and possible leading to acquittal of accused/respondents and therefore no interference is called for.
 - there is no evidence to show that the deceased was subjected to cruelty for dowry soon before her death or there was any demand of dowry from the respondents making them liable for the offence under Sections 304B or 498A IPC.
 - the prosecution has utterly failed to establish the necessary ingredients of Section 306 IPC to hold that the respondents abetted the commission of suicide.
 - Lastly, he submits that considering the fact that the appeal is against the judgment of acquittal, scope for interference is very limited.
6. We have heard learned counsel for the parties and perused the material available on record.
7. Smt. Anima Rai (PW-1) is the witness of inquest Ex.P-2.
8. Pradeep Kumar Rai (PW-2) is the father of deceased. He has stated that the accused persons kept her daughter happily for two months and thereafter they started harassing her. He has further stated that whenever he visited the matrimonial home of his daughter, his daughter used to tell

him that that all the three accused persons used to taunt and harass her. He has further stated that the deceased told him during her visit to his house in the month of December, 2002 that all accused No.3 is demanding Rs.25,000/- for the business of accused No.2 which he paid to her on 1.1.2003. On 7.1.2003 accused No.2 informed him over telephone that his daughter had committed suicide by hanging herself.

9. Smt. Kavita Rai (PW-3), mother of deceased, and Nandita Rai (PW-4), sister of deceased, have also deposed in the same tune and identical manner like Pradeep Kumar Rai (PW-2). Dr. S.P. Garg (PW-5) is the witness who conducted post-mortem examination on the body of deceased and gave report Ex.P-5. B.K. Mukherjee (PW-6) is the witness of inquest (Ex.P-2). Darshan Singh Marawi (PW-7) is the police person who helped in the initial investigation. K.L. Nayak (PW-8) is the investigating officer who has duly supported the prosecution case. K.S. Thakur (PW-9) is the police officer who had filed the charge sheet on completion of investigation.
10. Close scrutiny of the evidence of the witnesses makes it clear that though the deceased died within seven years of her marriage under unnatural circumstance i.e. by hanging herself, and it has come in the evidence of father, mother & sister of the deceased that the deceased was subjected to cruelty by the accused/respondents herein, but there is no conclusive piece of evidence to show that soon before her death, the deceased was subjected to cruelty by the respondents herein, which is *sine qua non* for attracting conviction under Section 304B of IPC. Likewise, there is nothing on record suggesting to that the deceased was being harassed or ill-treated by the accused/respondents to such an extent where she was left with no other option but to put an end to her life and being so, the offence under Section 306 IPC is also not made out against the

accused/respondents herein.

So far as the charge under Section 498A IPC is concerned, the trial Judge had, upon examination of the entire evidence on record, come to the conclusion that the accused/respondents herein cannot be found guilty of having committed the offence under Section 498A IPC and while holding so, the trial Judge noted all the circumstances including the circumstance of demand of Rs.25,000/- & Rs.1,00,000/-. The trial Judge has categorically held that if there was any such demand on the part of accused/respondents, this fact would have been told by Pradeep Kumar at the time of recording of merger intimation (Ex.P-3), but there is no whisper about any such demand in the said document. He had disclosed this fact for the first time in his statement recorded on 8.1.2003 but on 17.1.2003 he denied to have made any such statement, however, on 11.6.2003 he again took a somersault and claimed to have made such statement. Thus, considering the quality and nature of evidence adduced in respect of charge under Section 498A IPC, we are of the opinion that the trial Court has not committed any illegality in acquitting the respondents of the charge under Section 498A IPC.

11. While considering the scope of interference in an appeal or revision against acquittal, it has been held by the Supreme Court that if two views of the evidence are reasonable possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the trial Court. In the matter of State of Karnataka v. K. Gopalkrishna reported in (2005) 9 SCC 291, the Hon'ble Supreme Court, while dealing with an appeal against acquittal, observed as under:

"In such an **appeal** the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by

the Court below, that is sufficient for upholding the order of **acquittal**. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of **acquittal**."

12. In *Sudershan Kumar v. State of Himachal* reported in (2014) 15 SCC 666

the Hon'ble Supreme Court observed thus:-

"31. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled *Dhanapal v. State* which is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 37, propositions laid down in an earlier case are taken note of as under: -

"37. In *Chandrappa v. State of Karnataka*, this Court held: (SCC p. 432 para 42),

(1) An appellate court has full power to review, reappreciate 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.”

32. Thereafter, in para 39, the Court curled out five principles and we would like to reproduce the said para hereunder:

"39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re- appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

13. In *Dilawar Singh v. State of Haryana*, (2015) 1 SCC 737, the Supreme Court reiterated the same in paragraphs 36 and 37 as under :

“36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must

come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.

36. In [Chandrappa v. State of Karnataka](#), the scope of power of appellate court dealing with an appeal against acquittal has been considered and this Court held as under: (SCC p.432 para 42)

“42....(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.”

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal. It has been so stated in [State of Rajasthan v. Shera Ram](#).”

14. Accordingly, the appeal preferred by the appellant State is bereft of any substance, the same is liable to and is hereby dismissed. The judgment and order of the trial Court is hereby maintained.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

roshan/-