

**HIGH COURT OF GUJARAT****Bench: Justices Nirzar S. Desai and Hasmukh D. Suthar****Date of Decision: 20<sup>th</sup> May 2024**CRIMINAL APPELLATE JURISDICTION  
R/CRIMINAL APPEAL NO. 1030 of 1999**STATE OF GUJARAT ...APPELLANT****VERSUS****KHUBCHAND KAMUMAL THAVRANI & ORS. ...RESPONDENTS****Legislation:**Sections 302, 498(A), 306, 304(B), 114 of the Indian Penal Code (IPC)  
Section 378 of the Code of Criminal Procedure, 1973**Subject:** Criminal appeal against the acquittal of respondents accused of dowry death and related offenses. The appeal challenges the judgment of the Additional Sessions Judge, Rajkot, which acquitted the accused based on the lack of sufficient evidence and the failure to establish crucial elements of the prosecution's case.**Headnotes:**

Criminal Law – Acquittal in Case of Alleged Dowry Death and Cruelty – Appeal by State Dismissed – The High Court of Gujarat dismissed the State's appeal against the acquittal of the accused for offences under Sections 302, 498(A), 306, 304(B), and 114 of the Indian Penal Code. The Court held that the prosecution failed to establish a direct cause linking the alleged cruelty to the victim's suicide, and that the evidence provided did not substantiate the charges sufficiently to overturn the acquittal. [Paras 1-18]

Evidence Evaluation – Lack of Sufficient Corroborative Evidence – The High Court found that the testimony of the complainant, which alleged frequent anger and taunting by the in-laws, lacked corroborative evidence of any demand for dowry or immediate provocation leading to the victim's suicide. The absence of testimony from other relatives and critical witnesses weakened the prosecution's case. [Paras 10-12]

Judicial Principles – Standard for Reversing Acquittal – Emphasizing the principle that an appellate court should not overturn an acquittal unless the findings of the trial court are perverse or manifestly erroneous, the High Court concluded that the trial court's judgment did not meet the threshold for reversal. The decision of acquittal was upheld in light of the evidence on record. [Paras 13-15]

Decision – Dismissal of Appeal – Held – The appeal by the State of Gujarat against the acquittal of the accused was dismissed. The High Court affirmed that the findings of the trial court were reasonable and plausible, thereby upholding the acquittal due to insufficient evidence to convict the accused of the alleged crimes. [Para 17]

**Referred Cases:**

- Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225
- Ram Kumar v. State of Haryana AIR 1995 SC 280
- Rajesh Singh & Others vs. State of Uttar Pradesh (2011) 11 SCC 444
- Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh (2011) 6 SCC 394

**Representing Advocates:**

**Ms. Shruti Pathak, Additional Public Prosecutor for the appellant  
Mr. Nirav C. Thakkar for the respondents**

**ORAL JUDGMENT**

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

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 22.6.1999 passed by the learned Additional Sessions Judge, Rajkot in Sessions Case No.132 of 1994, whereby the respondents accused came to be acquitted for the offences under section 302 of Indian Penal Code and under section 498(A), 306, 304(B) and 114 of the Indian Penal Code, the appellant – State has preferred present appeal under section 378 of the Code of Criminal Procedure, 1973 (“the Code” for short).

2. At the outset, it was submitted by learned Additional Public Prosecutor Ms. Shruti Pathak that accused respondent No.1 Khubchand Kamumal Thavrani had expired on 8.2.2023, as per the police report submitted to the office of learned Additional Public Prosecutor on 1.2.2024 along with photocopy of the death certificate of Khubchand Kamumal Thavrani and hence, the appeal would abate qua respondent No.1. Photocopy of the police report submitted by the Police Inspector, Pradyumnagar Police Station, Rajkot City on 1.2.2024 as well as photocopy of the death certificate of Khubchand Kamumal Thavrani indicating that he has expired on 8.2.2023 are taken on record and hence, the present appeal would abate qua respondent No.1.

3. In the aforesaid background, I have heard learned Additional Public Prosecutor Ms. Shruti Pathak appearing for the appellant - State.

4. Brief facts giving rise to the present appeal is stated as under :-

4.1 As per the case of the prosecution, on 26.4.1994, one Mohanlal Narandas Sindhi registered FIR before the Pradyumannagar Police Station, Junction Police Choki, by stating that he was a resident of Godhra and is dealing with plastic goods, his mother has expired and father was old age and retired. There were two brothers and six sisters and out of six sisters fifth sister Sheela, age 23 years got married to one Balram Khubchand Sindhi of Rajkot in November 1993. His sister Sheela was residing with her in-laws, brother-in-law and sister-in-law. Her husband is unemployed. His sister never came to his residence after her marriage. According to the case of prosecution, when the complainant came to his sister's residence at Rajkot for two days, his sister told him that her in-laws are getting angry upon her very frequently and are taunting her that their parents have not given her anything and whenever she tried to state the aforesaid facts to her husband, he preferred to remain silent and was not allowing her to write a letter and was not allowing her to go out alone and she started crying. Thereafter, the complainant consoled her and asked her not to take any unforeseen step. He also asked her husband to take her along with her but he was denied the permission and therefore, he went to Godhra alone. He also wrote to the in-laws of Sheela to send her to Godhra but the letters were not replied. On 25.4.1994, at around 12:30 he received a letter from father-in-law of Sheela wherein it was written that he may take Sheela on 15.4.1994 but he may send Chimanlal who happens to be the brother of complainant and after receiving the aforesaid letter, he received a phone call that as the television was set on fire, Sheela has received burn injury and thereafter, around at 2:15 in the afternoon, he

received a telegram that Sheela has expired, come soon. The complainant reached Rajkot at the midnight and upon inquiry he found that Sheela has died due to the television set catching fire. However, upon inspecting the room, the complainant found that there was smell of kerosene coming from the room and there were fume spots on the sealing as well as on the wall because of fire and accordingly to him, when the incident took place, only Sheela and her sister-in-law Bhagwatiben were present in the house and therefore, he registered a complaint against the accused respondents.

4.2 In pursuance of the complaint lodged by the complainant with the Pradyumnagar Police Station, Rajkot for the offence under section 302 of Indian Penal Code and under section 498(A), 306, 304(B) and 114 of the Indian Penal Code, the investigating agency recorded statements of the witnesses, drawn panchnama of scene of offence, discovery and recovery of weapons and obtained FSL report for the purpose of proving the offence. After having found sufficient material against the respondent accused, charge-sheet came to be filed in the Court of learned Chief Judicial Magistrate, Rajkot. As said Court lacks jurisdiction to try the offence, it committed the case to the Sessions Court, Rajkot as provided under section 209 of the Code.

5. Thereafter, the case was committed by the learned Magistrate and was sent to Sessions Court. Upon committal of case, the charge was framed vide Exh. 1 and as the respondent accused pleaded not guilty, the trial commenced.

6. In order to bring home charge, the prosecution has examined 6 witnesses and also produced various documentary evidence before the learned trial Court, more particularly described in para 4 of the impugned judgment and order.

7. On conclusion of evidence on the part of the prosecution, the trial Court put various incriminating circumstances appearing in the evidence to the respondent accused so as to obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the respondent accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and false case has been filed against him.

8. We have heard learned Additional Public Prosecutor Ms. Shruti Pathak for the appellant – State and minutely examined oral and documentary evidence adduced before the learned Trial Court.

9. Learned Additional Public Prosecutor Ms. Shruti Pathak made following submissions :-

9.1 Learned Additional Public Prosecutor Ms. Shruti Pathak submitted that span of marriage was less than seven years between the deceased and the accused No.1 as the marriage took place in November, 1993 whereas the incident took place in April 1994 and therefore, statutory presumption would go against the present respondents. However, this vital aspect has not been taken into consideration by the learned Trial Court and therefore, impugned order is required to be quashed and set aside.

9.2 It was further submitted by learned Additional Public Prosecutor Ms. Pathak that the learned judge has not properly appreciated the deposition of complainant Mohanlal Narandas Sindhi at Exh.22 wherein he has specifically stated about the ill-treatment given to his sister. It was also submitted that the learned judge has not properly appreciated the panchnama of the scene of offence at Exh.44 wherein it was clearly stated that there was a smell of kerosene.

9.3 The learned judge has failed to appreciate the fact that as per the deposition of brother of the victim that deceased sister was subjected to cruelty, the case was required to be considered keeping the aforesaid aspect in mind and hence, the appreciation of evidence without keeping the aforesaid facts in mind has resulted into acquittal of the accused person and therefore, impugned judgment is bad. Except that, no other submissions were made, nor any judgments were cited by learned Additional Public Prosecutor.

10. We have heard learned Additional Public Prosecutor Ms. Shruti Pathak and perused the record. On perusal of record, we found that it is true that the complainant Mohanlal has stated about the fact that the in laws of the deceased were getting angry frequently upon the deceased person. However, on perusal of his deposition at Exh. 22, about the demand of dowry though he has stated that there were taunts by the in-laws stating that parents of the deceased has not given her anything, however, there is no mention about any demand by the in laws of the deceased.

11. Further, it seems that though the marriage of span is less than six months, despite that except the complainant no other relative is examined by the prosecution. So much so that the person viz. Lalchand Kamumal Jaytesinhji whose reference is there in police diary indicating that when the deceased was taken to doctor, it was Lalchand Kamumal Jaytesinhji who indicated that the deceased is staying with in-laws since last six months and the deceased was taken to doctor by the aforesaid Lalchand Kamumal Jaytesinhji.

12. Further on perusal of evidence, we don't find that any of the witnesses have stated anything about the triggering point which has led to the deceased victim to commit the suicide. The record is absolutely silent about what led immediately before the deceased committed suicide to compel the deceased person to commit suicide and therefore, when the prosecution has failed to

point out anything which would compel the learned judge to take a different view, we don't see any error committed by the learned Additional Sessions Judge Rajkot in acquitting the accused respondent, on the basis of material on record and on the basis of deposition of the witness as the same is not sufficient to compel the learned judge to take a different view.

13. It is a cardinal principle of criminal jurisprudence that in an 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 Additional Public Prosecutor 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.

14. 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."

15. 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.

16. 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.
17. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed.
18. Record and proceedings be sent back to the concerned Trial Court forthwith.

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