



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1108 OF 2016

SANJAY KUMAR

APPELLANT

VERSUS

STATE OF HIMACHAL PRADESH

RESPONDENT

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The acquittal of the appellant by the Sessions Court for the offence punishable under Sections 498-A and 306 of the Indian Penal Code, 1860¹ having been overturned by the High Court of Himachal Pradesh² into his conviction, the appellant has preferred the present criminal appeal.

2. The case of the prosecution is that in January 2008, Sanjay Kumar, A1³ got married to Lata⁴. On the same day, the younger sister of the victim, Manju was also married. Sometime after their marriage, it was alleged that the mother of the appellant,

¹ For short, 'the Penal Code'

² For short, 'the High Court'

³ For short, 'the appellant'

⁴ For short, 'the victim'

Kaushalya⁵, sisters Neelam⁶ and Reema⁷ used to harass the victim on one pretext or the other. This fact was noticed by the younger sister of the victim, Diksha. It was further alleged that yet another sister of the victim, namely Mamta also noticed the harassment of the victim when she visited her matrimonial home. The death anniversary of the victim's father was in May 2008, when all the sisters were present at their parental house. The appellant had accompanied his wife to her parental house. It was stated that on that day, there were arguments between the appellant and the victim, which required the intervention of some of the family members. Sometime in July 2009, the victim gave birth to a daughter and, hence, the victim's sister had joined her at the matrimonial home. It was alleged that acts of torturing the victim continued and she was not being given proper food. On the fateful day, the family of the victim received a phone call by which they were informed that the victim had consumed poison, as a result of which she was taken to hospital. She, thereafter, died during the course of treatment. A report was, accordingly, lodged with the police authorities and investigation was undertaken. At the

⁵ For short, 'A2'

⁶ For short, 'A3'

⁷ For short, 'A4'

conclusion of the investigation, charge-sheet was filed. The appellant along with A2 to A4 were charged of having committed an offence punishable under Sections 498-A and 306 of the Penal Code. All the accused did not accept their guilt and were, accordingly, tried.

3. The prosecution examined fifteen witnesses to bring home the charge against the accused. The witnesses included family members of the victim, the Secretary of the Gram Panchayat, the Medical Officer, a pharmacist and the Investigation Officer. The defence of the accused was that of denial. The learned Judge of the Sessions Court, after considering the entire evidence on record, held that the demand of dowry as well as the acts of cruelty had not been proved by the prosecution. The evidence brought on record was mostly hearsay and in general terms. With no injuries found on the body of the victim nor any report of her physical torture having been reported to any authority, it was held that the prosecution had failed to bring home the charges levelled against all the accused. By the judgment dated 10.06.2010, the learned Judge of the Sessions Court acquitted all the accused persons.

4. The State of Himachal Pradesh, being aggrieved, challenged the acquittal of all the accused by preferring an appeal before the

High Court. The High Court was of the view that though the prosecution had failed to bring home the charges against A2 to A4, the said charges had been proved beyond reasonable doubt against the appellant. It was on account of the acts of torture and the giving of abuses to the victim that the victim was driven to commit suicide within a short duration of her marriage. Accordingly, the acquittal of the appellant by the Sessions Court was reversed and he was convicted for the offence punishable under Sections 498-A and 306 of the Penal Code. The appellant was then heard on the quantum of sentence. He was sentenced to undergo rigorous imprisonment for a period of four years and also ordered to pay fine of ₹10,000/- for the offence punishable under Section 306 of the Penal Code. As regards offence under Section 498-A of the Penal Code, he was sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5,000/-. Both the sentences were to run concurrently. Being aggrieved by the judgment of conviction, the appellant has assailed the same before this Court.

5. Mr. D.N. Goburdhun, learned Senior Advocate for the appellant submitted that the High Court committed an error in reversing the acquittal of the appellant without taking into

consideration the various reasons assigned by the Sessions Court while acquitting him. He submitted that the Sessions Court considered the entire evidence of the prosecution witnesses in detail and thereafter concluded that the prosecution had failed to prove the guilt of the appellant beyond reasonable doubt. Various material omissions as well as improvements in the depositions of the prosecution witnesses were brought on record through their cross-examination. The conduct of the appellant of taking steps to provide immediate medical help to the victim was given due importance by the Sessions Court. The High Court, however, without any contrary material on record proceeded to hold that it was the appellant who led the victim to commit suicide. Referring to the provisions of Section 306 read with Section 107 of the Penal Code, it was submitted that there was no evidence, whatsoever, to indicate any abetment on the part of the appellant that led the victim to commit suicide. Ignoring the settled principles of law that were required to be kept in mind while considering an appeal against acquittal, the High Court in its brief judgment set aside the appellant's acquittal without there being any legal justification. To substantiate his contentions, the learned Senior Advocate placed reliance on the decisions in **Chandrappa and others Vs. State of**

Karnataka⁸, State of U.P. Vs. Banne @ Baijnath and others⁹, Mahendra Pratap Singh Vs. State of U.P.¹⁰, Bhagwan Das Vs. Kartar Singh and others¹¹ and Madan Mohan Singh Vs. State of Gujarat and another¹². He, thus, submitted that on a proper consideration of the entire evidence on record, it was clear that the appellant had been rightly acquitted by the Sessions Court and the High Court committed an error in reversing the same.

6. Mr. Vikrant Narayan Vasudeva, learned counsel appearing for the respondent supported the impugned judgment of the High Court. He submitted that the Sessions Court having failed to correctly appreciate the evidence led by the prosecution witnesses, the High Court rightly took into consideration such evidence to hold that the appellant was indeed guilty of having committed an offence punishable under Sections 306 and 498-A of the Penal Code. The Sessions Court gave undue importance to minor contradictions which resulted in arriving at a wrong conclusion. The demands made by the appellant and his family members were sufficient to come to a conclusion that such demands were towards

⁸ 2007 INSC 142

⁹ Criminal Appeal No.1100 of 2001 decided on 10.02.2009

¹⁰ 2009 INSC 244

¹¹ 2007 INSC 565

¹² 2010 INSC 521

dowry and that in view of the harassment given to the victim, she committed suicide. The prosecution witnesses, though related to the victim, had all deposed about the ill-treatment and harassment of the victim and there was no reason to discard their evidence. The High Court on a correct appreciation of the entire evidence on record rightly found that the guilt of the appellant was duly proved. Mere absence of a prior complaint as regards torture and ill-treatment would not be a factor favouring the appellant. Moreover, the presumption under Section 113A of the Indian Evidence Act, 1872 was clearly attracted and there was no rebuttal evidence by the appellant. It was, thus, submitted that the High Court having considered all relevant material on record, there was no reason to interfere with the impugned judgment. He, therefore, prayed that the criminal appeal be dismissed.

7. We have heard the learned counsel for the parties at length and we have perused the evidence brought on record by the prosecution. We have thereafter given thoughtful consideration to the entire matter. In our view, the High Court was in error in reversing the acquittal of the appellant without coming to a finding that the view taken by the Sessions Court in favour of the appellant was either perverse or was impossible in view of the evidence on

record.

8. When the evidence led on behalf of the prosecution is examined in detail, it reveals that all the prosecution witnesses have deposed in general terms without referring to any specific incident of either torture or harassment or demand of dowry from the victim. PW1-Kamla Devi, the mother of the victim, deposed that she used to receive telephone calls from her daughter in which she used to state that she was being tortured by the accused. She also stated that her daughter used to be kept hungry for days together by the accused. In her examination-in-chief itself, she admitted that she did not inform any authority about the torture of her daughter. In her cross-examination, she admitted that whenever her daughter and the appellant used to visit them, they were seen to be happy. At the matrimonial house, only her daughter and her mother-in-law were residing while other family members used to go out for their education and employment. Various omissions in her cross-examination were brought out by the defence. These included the incident of the victim being slapped by the appellant in her presence and a telephone call from the victim regarding her torture. She also admitted that the victim had called her husband to take her to her matrimonial house and after that she had gone

back with the appellant.

9. Other relatives of the victim who were examined were PW4-Manju, her elder sister, PW5-Jaidev, her cousin, PW7-Mamta, her younger sister and PW8-Diksha, her other younger sister. Their depositions are also of a general nature and various omissions were also brought out in their cross-examination. In fact, the victim's sisters stated that whenever they used to visit the victim's matrimonial home, they were well received and were treated properly. There is nothing specific deposed by them about any incident of torture or harassment.

10. PW2-Asha Parihar was residing near the matrimonial house of the victim. In her cross-examination, she stated that all the accused had good social respect and that she had never heard about any dispute between the victim and her husband. She admitted that the appellant had tried his best to save the life of the victim and according to her, the victim had taken poison by mistake. In this regard, if the deposition of PW10, Avinash Parihar, who was a pharmacist is considered, he states that on 16.11.2009 at 09.00 a.m., the appellant had come to his shop and had told him that the victim was not feeling well. He requested him to accompany him and also asked for medicines. This witness had

accompanied the appellant to his house and had given her an injection, Decadon. In her cross-examination, he stated that the victim had told him that she had taken medicine from a bottle and when he saw that empty bottle, he found that it was poison. He asked the appellant to take the victim to the hospital immediately. The appellant immediately called for a vehicle and took his wife to the hospital. As per the Post-Mortem Report, the cause of death was on account of ingestion of a poisonous substance. As per the report of the State Forensic Science Laboratory, traces of Insecticide (Endosulfan) were detected in the contents of the parcels. Pertinently, no injury was found on the body of the victim.

11. The Sessions Court considered all this evidence in detail. It noted that the allegations of demand of money or asking the victim to take loan were afterthought allegations. It noted that no witness had deposed that the victim was ever threatened with any consequences, whatsoever. There was no evidence at all of any unlawful demand. Mere harassment by itself could not be treated to be cruelty. In fact, it was noted that the victim was treated affectionately by the accused when she was pregnant and also after delivering a child. On that basis, the Sessions Court proceeded to acquit all the accused from the aforesaid charges. It is to be noted

that the learned Judge had the occasion to note the demeanour of all the witnesses while recording their evidence.

12. The acquittal of all the accused was challenged by the State of Himachal Pradesh before the High Court. Perusal of the impugned judgment of the High Court indicates that it failed to come to close quarters with reasons assigned by the Sessions Court. In its short discussion spreading over only two paragraphs, the acquittal of the appellant was reversed by holding that the prosecution had proved beyond reasonable doubt that the victim had been harassed mentally and physically by the appellant. It observed that the appellant had abused and dragged the victim in the presence of her mother and sisters. We, however, do not find any such evidence on record. In fact, these witnesses admitted in their cross-examination that they had not made such statements before the police authorities. In our view, it was necessary for the High Court, as an appellate Court, while considering an appeal against acquittal, to record a finding that the Sessions Court had either misread the entire evidence to arrive at a perverse conclusion or that its conclusion could not be supported by the evidence on record. However, no such finding has been recorded in the impugned judgment.

13. At this stage, it would be necessary to bear in mind the legal principles to be applied when an appellate Court is confronted with a judgment of acquittal by the trial Court. The Privy Council in **Sheo Swarup and others and The King-Emperor**¹³, highlighted the material factors to be borne in mind by an appellate Court while considering an appeal against acquittal.

This Court in **Bhubneshwar Mandal and others Vs. The State of Bihar**¹⁴ while approving the aforesaid decision, held in paragraph 3 as under:

“3. It appears to us that the learned Judges of the High Court have ignored very important points in the evidence in the case and allowed the appeal against acquittal and convicted the present appellants. It is not necessary to set out at great length the various decisions regarding the powers of the High Court in an appeal against acquittal. The classic statement is found in the decision of the Privy Council in *Sheo Swarup v. King Emperor* to the following effect:

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

¹³ AIR 1934 PC 227(2)

¹⁴ Criminal Appeal No.257 of 1969 decided on 06.12.1972

In **State of Uttar Pradesh Vs. Samman Dass**¹⁵, this position

has been reiterated through the following observations:

“...This Court in an appeal under article 136 of the Constitution does not normally re-appraise the evidence and interfere with the assessment of that evidence by the High Court. Where, however, this Court finds that grave injustice has been done by the High Court in interfering with the decision of the trial court on grounds which are plainly untenable and the view taken by the High Court in interfering with the decision of the trial court on this Court would not stay its hand. There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; secondly, if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the trial judge, the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and as observed recently by this Court, the doubt should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given. To put it differently, it is "not the doubt of a vacillating mind that has not, the moral courage to decide but shelters itself in a vain and idle scepticism" (see Himachal Pradesh Administration Vs. Shri Om Parkash, Cr. Appeal 67 of 1969 decided on December 7, 1971).”

14. When the impugned judgment of the High Court is examined in the aforesaid backdrop, it is seen that its conclusion is totally unsustainable and based on material not available on record. The appellant having been charged under Section 306 of the Penal Code, the aspect of abetment as contemplated in Section 107 of

¹⁵ 1972 INSC 11

the Penal Code would also be material. In this regard, we may refer to the following observations in *Madan Mohan Singh (supra)*:

“...In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC...”

15. It is likely that there may have been some disputes or discord in the matrimonial life of the appellant and the victim. That, however, would not be sufficient in itself to attract the provisions of Section 306 read with Section 107 of the Penal Code. In fact, there is no evidence, whatsoever, to indicate any act of abetment by the appellant. On the contrary, it has been brought on record that the appellant, on realising that the victim had ingested some liquid thinking it to be a medicine, had immediately sought medical aid from PW10. He also shifted the victim immediately to the hospital.

16. Thus, on considering the entire evidence on record, it is clear that the Sessions Court was justified in arriving at the correct conclusion that the prosecution had failed to prove the charge against the appellant beyond reasonable doubt. The High Court committed an error in reversing the acquittal of the appellant. Its judgment is, thus, liable to be set aside.

17. For the aforesaid reasons, the impugned judgment of the High Court dated 17.08.2016 passed in Criminal Appeal No.566 of 2010 is quashed and set aside. The appellant is acquitted of the charges framed against him. He is presently enlarged on bail. His bail bonds stand cancelled.

18. The Criminal Appeal is, accordingly, allowed.

.....**J.**
[**UJJAL BHUYAN**]

.....**J.**
[**ATUL S. CHANDURKAR**]

NEW DELHI,
SEPTEMBER 03, 2026.