

**Reserved On : 21/08/2026****Pronounced On : 25/09/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 52 of 2000****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE VIMAL K. VYAS****and****HONOURABLE MR. JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT**Versus****KHEMCHAND FATANDAS RAICHANDANI & ORS.**

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Appearance:**MS ASMITA PATEL, APP for the Appellant(s) No. 1****BAILABLE WARRANT UNSERVED for the****Opponent(s)/Respondent(s) No. 1,2,3**

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CORAM: HONOURABLE MR. JUSTICE VIMAL K. VYAS**and****HONOURABLE MR. JUSTICE P. M. RAVAL****CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE P. M. RAVAL)****1. This acquittal appeal at the instance of the State has been**



filed under Section 378(1)(3) of the Criminal Procedure Code, 1973, assailing the judgment and order dated 06.09.1999 passed by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad, in Sessions Case No. 287 of 1996, whereby, the respondents herein (*i.e.* the original accused) came to be acquitted from all the charges levelled against them.

2. Outlined facts of the prosecution case are that, the marriage of the daughter of the *de facto* complainant was solemnized with the respondent No.2 herein about two years prior to the occurrence, which took place on 05.08.1996, whereby, the daughter of the *de facto* complainant committed suicide by consuming acid allegedly on account of physical and mental harassment and cruelty being meted out to her at the hands of the respondents herein – accused for demand of dowry. Thus, regarding the said offence, an FIR came to be registered against the respondents.

3. Pursuant to FIR, investigation was carried out, and upon completion of the investigation, charge-sheet came to be filed before the learned Magistrate. As the offence was Sessions triable, the case came to be committed before the City Sessions Court at Ahmedabad. After committal of the case, the learned Sessions Judge framed the Charge against the accused for the aforesaid offences. The Charge was read over and explained to the accused, who pleaded not guilty to the charge and claimed to be tried.



3.1 To bring home the charge against the accused, the prosecution has examined 13 witnesses and produced several documentary evidence; whereas, the respondents – accused have also examined 2 witnesses and produced some documentary evidence, as reflected in the impugned judgment and order.

3.2 On culmination of the trial, the trial Court acquitted all the accused from the charges levelled against them. Hence, the grieved appellant – State has filed this appeal against the acquittal.

4. At the outset, it is required to be noted that theailable warrant issued against the respondents – accused remained unserved. The appeal is of the year 2000, hence the Court deemed it proper to proceed with the matter in accordance with law.

5. Heard, learned Additional Public Prosecutor Ms. Asmita Patel for the appellant – State.

5.1 The learned Additional Public Prosecutor Ms.Patel would submit that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective, thereby committed a grave error in acquitting the accused, as aforesaid.

5.2 The learned Additional Public Prosecutor Ms.Patel would further submit that from the evidence produced on record it appears that the ingredients of the offence alleged were satisfied;



however, the learned trial Judge has erred in properly appreciating the same. Therefore, the judgment and order of the trial Court in acquitting the accused persons from the charges levelled against them suffers from manifest perversity.

5.3 The learned Additional Public Prosecutor Ms.Patel has submitted that the learned trial Judge has failed to appreciate the Dying Declaration (Exh.30) duly recorded by the Executive Magistrate, wherein the deceased has categorically stated that her parents-in-law (i.e. the respondent Nos. 1 and 3 herein) were often demanding money from her and were harassing her for dowry, and the respondents, including her husband (i.e. the respondent No. 2 herein) had beat her. Therefore, she consumed acid. Thus, in the circumstances when the deceased herself has deposed such a fact in her statement, which is recorded by none other than an Executive Magistrate, the learned trial Judge has committed a grave error in disbelieving the same only on the count that the Executive Magistrate did not ascertain the fact of mental state of the deceased from the doctor nor the doctor was kept present at the time of recording the statement of the deceased.

5.4 It is submitted that the medical evidence also supports the case of the prosecution that the deceased was conscious enough to give her statement and that, the doctor, namely, Dr.Anand Subrahmanyam Hoskarve, who has been examined as PW-12 at Exh.51, in his cross-examination, has also admitted that the



deceased was conscious at the time of recording of her Dying Declaration. Thus, it is submitted that even the medical evidence supports the case of the prosecution; however, the learned trial Judge has discarded the said evidence without assigning any plausible reason, thereby committed a grave error.

5.5 Thus, by making above submissions, the learned Additional Public Prosecutor Ms.Patel has urged that this appeal may be allowed and the judgment and order of the trial Court acquitting the accused persons from the aforesaid grave offence may be set aside and they may be convicted and sentenced appropriately.

6. The Court has considered the arguments advanced by the learned Additional Public Prosecutor Ms.Patel for the appellant – State and has also gone through the R&P of the learned trial Court concerned.

6.1 At the first instance, if the principles governing the acquittal appeals are taken into consideration, it is well-settled law that when two views are possible from the evidence on record, the view which is favourable to the accused shall be taken into consideration by the Court. Furthermore, it is also settled by a catena of decisions of the Apex Court that in acquittal appeals, there is a double presumption in favour of the accused: the first is that an accused is presumed to be innocent until proven guilty, and the second is that the trial Court record an acquittal, thus

further strengthening the presumption. In *Constable 907 Surendra Singh v. State of Uttarakhand with Ashad Singh Negi v. State of Uttarakhand*, 2025 (0) AIJEL-SC 74636, the Apex Court held:

“11. Recently, in the case of Babu Sahebagouda Rudragoudar and others v. State of Karnataka, (2024) 8 SCC 149 a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432 , para 42)

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 Criminal Procedure Code, 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.

40. Further, in *H.D. Sundara v. State of Karnataka* [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

8. 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

12. *It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

(emphasis supplied)

6.2 Further, Apex Court in the decision in *State of Karnataka v. Hemareddy @ Vemareddy*, AIR 1981 SC 1417, has held:

*"6. We were taken through the Judgement of the learned Judges of the High Court. We are satisfied that the learned Judges were justified in coming to the conclusion on the evidence that Hemareddy alias Vemareddy is guilty u/s. 467 read with sec. 114, I. P. C. and that Pyatal Bhimakka is guilty u/s. 467, I. P. C. Since we agree with the learned Judges of the High Court on the question of fact in so far as it relates to A-2 in full and as regards Hemareddy alias Vemareddy (A-2) in respect of his conviction u/s. 467 read with sec. 114, it is unnecessary for us to refer to the evidence relied upon by the learned Judges for coming to the conclusion that Hemareddy alias Vemareddy is guilty under Section 467 read with sec. 114, I. P. C. and that Pyatal Bhimakka is guilty under Section 467, I. P. C. **This Court has observed in Girija Nandini Devi V/s. Bigendra Nandini Choudry (1967) 1 SCR 93 that it is not the duty of the appellate Court when it agrees with the view of the trial 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 reasons given by the Court the decision of which is under appeal, will ordinarily suffice. We shall deal with the case of the prosecution against Hemareddy alias Vemareddy under Section 193. I. P. C. separately. We, therefore, confirm the conviction of Hemareddy alias Vemareddy u/s. 467 read with sec. 114, I. P. C. and of Pyatal Bhimakka u/s. 467, I. P. C. We are of the opinion that no interference with the Judgement of the learned Judges of the High Court in regard to the sentence awarded to Pyatal Bhimakka is called for having regard to the fact that the learned Judges have given sufficient reasons for taking a lenient view in regard to that accused on the question of sentence. We, therefore, dismiss the Criminal Appeal in so far as it relates to the question of sentence awarded to Pyatal Bhimakka."

(emphasis supplied)

6.3 Thus, it is trite law 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. Further, the appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible. It is also a trite law that it is not the duty of the appellate Court,



when it agrees with the view of the trial Court on the evidence, to repeat the narration of the evidence or to reiterate the reasons given by the trial Court; an expression of general agreement with the reasons given by the Court whose decision is under appeal will ordinarily suffice.

7. Bearing in mind the afore-stated principles, if the case on hand is adverted to, the prosecution has examined 13 witnesses and produced several documentary evidence to bring home the charge against the respondents – accused; whereas, the defence has also examined two witnesses as well as produced some documentary evidence.

7.1 It appears that the entire case of the prosecution rests upon the Dying Declaration made by the deceased. It is trite law that absence of a medical certificate regarding declarant's mental fitness at the time of recording can cast doubt on the declaration's credibility. However, absence of such a certificate does not automatically invalidate the declaration if the circumstances inspire confidence. The declaration must be made voluntarily, coherently, and without prompting or tutoring, to be admissible and reliable. If the declarant was conscious and capable of making a coherent statement, that satisfaction is sufficient for the declaration to be considered reliable and admissible evidence. Thus, the ultimate test is whether the dying declaration is voluntary, truthful, and inspires full confidence of the Court.



7.2 Keeping in mind the aforesaid legal position, prior to dealing with the aspect of Dying Declaration, if the narration of the FIR is perused, it appears that save and except the bald allegations that the accused were demanding dowry, and for that, they were harassing the deceased, there is nothing on record to show any exact instance or such demand and/or any overt act in pursuance to their demand causing any harassment and cruelty upon the daughter of the *de facto* complainant. The only thing which is mentioned in the complaint by the *de facto* complainant is that the accused were demanding dowry and for that they were harassing the deceased. The statement of the deceased in the Dying Declaration at Exh.30, which is recorded by the Executive Magistrate, is also silent about the role played by all the accused. The deceased only narrates that she was being subjected to cruelty and harassment by the respondent Nos. 1 and 3, as well as, her husband (*i.e.* the respondent No. 2) along with other respondents, had beat her once. Save and except, nothing else could be carved out from the statement of the deceased who is the best witness for herself. It is common parlance that small and scattered incidents, without any immediate proximity to the incident in question, do not constitute an offence of cruelty and/or an offence under the Dowry Prohibition Act.

7.3 Thus, while Section 498A of the IPC explains 'cruelty' as any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to



life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, the facts of the case reveal neither of them, inasmuch as, the only allegation which is levelled against the respondents – accused is they were harassing the deceased but, no specific incidence is narrated as to how such harassment and/or cruelty was perpetuated and thereby, implicated the family members including the husband in the alleged offence. Further, it is the case of the complainant himself that out of the marriage span of about two years, initially her daughter (i.e. the deceased) was kept well by the accused, therefore, for want of any evidence to prove such allegations, in the considered opinion of the Court, the learned trial Judge has rightly concluded *qua* such offence.

7.4 As per the charge, the allegations are pertaining to the offence punishable under Section 498A read with Section 114 of the IPC. It is alleged that due to constant harassment on the part of the in-laws regarding demand of dowry, the daughter of the complainant committed suicide by consuming acid on 05.08.1996, and during the treatment, she succumbed to the injuries on 17.08.1996. The Dying Declaration of the deceased (Exh.30) is also duly recorded by the Executive Magistrate.



7.5 So far as the allegation of demand of dowry is concerned, the prosecution has relied upon the evidence of the complainant Bhagwandas Godumal Hemnani (PW-1), who is the father of the deceased, the evidence of the sister of the deceased Rajniben Keshavlal Atwani (PW-3), the evidence of the brother-in-law of the deceased Keshavlal Parchomal Atwani (PW-4). All these witnesses, in their respective examination-in-chief at Exhibits-14, 22 and 23, have similarly deposed that several times, the accused had demanded for dowry. However, in their cross-examination, they have stated that at the time of engagement of the deceased and even during her marriage with the accused - respondent No. 2 herein, there was no demand of any kind in any form from the in-laws of the deceased. Further, there is no evidence of any neighbour on record suggesting any cruelty or harassment meted out to the deceased by her in-laws regarding dowry. Considering the aforesaid, this Court is of the considered opinion that the prosecution has miserably failed to prove the allegation regarding the offence punishable under Section 498A of the Indian Penal Code. It is noteworthy that even the trial Court, after appreciating the evidence, has arrived at the same conclusion, which cannot be said to be perverse considering the evidence on record.

7.6 So far as the presumption under Section 113B of the Evidence Act, 1872, is concerned, it would be worthwhile to refer to the recent decision of the Apex Court in *Ram Pyarey v. State of Uttar Pradesh*, 2025 (0) AIJEL-SC 74584, wherein, it is held as

under:

"12. The law as regards the abetment of suicide punishable under Sections 306 of the IPC is now well settled. It appears that the Courts below laid much emphasis on Section 113B of the Evidence Act, 1872 (for short, "the Evidence Act").

Section 113A of the Evidence Act talks about presumption.

Section 113A and Section 113B read thus:-

"113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

13. It is relevant to note that under Section 113B, the

Court may presume unlike Section 113A where the statute says that Court shall presume. This is a vital difference between the two provisions which raises presumption as regards abetment of suicide. When the Courts below want to apply Section 113B of the Evidence Act, the condition precedent is that there has to be first some cogent evidence as regards incessant harassment. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightaway invoke Section 113B and presume that the accused abetted the commission of suicide.

14. *In view of the aforesaid, this appeal succeeds and is hereby allowed. The judgment and order of conviction passed by the trial court as confirmed by the High Court is hereby set aside."*
(emphasis supplied)

7.7 In the case on hand, upon careful scanning of the entire evidence on record, the same does not reflect any overt act or action or anything aiding/instigating such an act, which may amount to harassment, much less, incessant harassment and/or cruelty, allegedly, being inflicted to the deceased at the hands of the respondents – accused. Even, the FIR narrates general and omnibus allegations relating to demand of dowry and harassment therefor. In the circumstances, as observed in the aforesaid decision by the Apex Court, in the absence of any cogent evidence as regards the harassment or abetment in any form like aiding or instigating, the Court cannot straightaway invoke Section 113B and presume that the accused abetted the commission of suicide, more particularly, when cruelty/harassment itself is absent from the evidence on record.



7.8 So far as the second allegation regarding the offence punishable under Section 306 of the IPC is concerned, it is essential for the prosecution to prove the ingredients of abetment which is defined under Section 107 of the IPC. Meaning thereby, that the prosecution has to prove the aspects of aid, instigation and conspiracy on the part of the accused beyond reasonable doubt. It appears that the entire case of the prosecution rests upon the Dying Declaration.

7.9 The prosecution has examined the Executive Magistrate (PW-5) Sanatan Bapalal Dutt at Ex.28. This witness, in his examination-in-chief, has stated that he had received a Yadi from the Sardarnagar Police Station on 08.08.1996 at about 12:55 in the afternoon for recording the dying declaration. He has further stated that he had obtained the endorsement of the doctor present at the E-3 Ward of the Civil Hospital regarding the consciousness of the deceased. He has further stated that since the deceased was conscious, able to speak and well-oriented, he had recorded her Dying Declaration in a 'Question-Answer' format, which is produced at Exh.30. Even, during his cross-examination, this witness has stated that even though the deceased had consumed acid, she was able to speak like a normal person.

7.10 It is true that *sans* any endorsement of the doctor on the Dying Declaration with regard to the fact that the deceased was in a fit state of mind to give statement, the said Dying Declaration



cannot be discarded; nonetheless, here is a different story, which is to the effect that the deceased, allegedly, had consumed acid due to which, she was not in a position to speak. The incident had occurred on 05.08.1996, and she regained her speech only on 08.08.1996, and her statement was recorded on the very same day, *i.e.* on 08.08.1996, by the Executive Magistrate. Accordingly, if the deposition of PW-6 – Dr.Digant Kalidas Dixit at Exh.32 is perused, he has stated that on 06.08.1996 the deceased was brought to him, and upon examining her, she was found to be conscious but could not speak. There were colossal burns in her mouth; meaning thereby, the deceased suffered extreme chemical trauma.

7.11 Further, if the deposition of PW-7 – Vinodkumar Lajjaram Gupta at Exh.34, the Medical Officer who performed the *Post Mortem* of the deceased on 18.08.1996, is perused, he has stated that the deceased's mouth was burnt from inside and there were ulcers in her mouth. In his cross-examination, he has admitted that due to burns and ulcer, the deceased could not be fed orally.

7.12 If the deposition of PW-8 Dr.Niyati Abhaykumar Maniar, Exh.37 is perused, she, in her examination-in-chief, has stated that the deceased was referred to her on 06.08.1996, and upon examining her, she did not find any ulcer in her mouth or her tongue or lips. In her cross-examination, she stated that the deceased had difficulty in speaking and could not speak clearly. Moreover, the deceased was injected with a painkiller injection.



7.13 Now, if the deposition of PW-9 – Dr. Sunil Manilal Borisa, Exh.41 is perused, he has stated that on 06.08.1996, the deceased was referred to him as she had Dysarthria, and upon examining, it was found that the deceased had no problem with her voice; however, upon asking the deceased, she replied that she had a problem in drinking water and taking food. It was found that she had a mouth ulcer and her mouth could not be well opened.

7.14 In this context, the medical evidence produced by the prosecution on record is required to be considered carefully. The prosecution has examined Dr.Maheshbhai Fatumal Shakhmani (PW-11) at Exh.48, a practicing Medical Officer at Suman Hospital. His evidence reveals that the victim was brought to his hospital on 05.08.1996 at about 10 O'clock in the morning with the history of consuming acid, and upon examination, the victim's mouth was burnt internally and she was having ulcers in her mouth. This witness has specifically stated in the examination-in-chief that although the victim was conscious and oriented, she was responding only in 'Yes'/'No'. During his cross-examination, he has specifically elicited that the victim was having difficulty in speaking but was able to respond in 'Yes'/'No'.

7.15 The prosecution has, thereafter, examined Dr.Anand Subrahmanyam Hoskarve (PW-12) at Exh.51. In his examination-in-chief, he has stated that although the victim was conscious, her condition was not good since her abdomen, lower esophagus,



peritonitis and small intestine got punctured.

7.16 Upon conjoint reading of the evidence of the Executive Magistrate and the medical evidence, as narrated herein above, it reveals that although the victim was conscious and oriented, she was not able to speak properly and was responding in 'Yes'/'No'. Considering the aforesaid, it clearly appears that the testimony of the Executive Magistrate (PW-5) Sanatan Bapalal Dutt is quite contrary to the evidence of the medical officers. Therefore, it cannot be said that the prosecution has proved beyond reasonable doubt that at the time of recording of the Dying Declaration, the victim was conscious, oriented, able to speak and was in a fit state of mind to depose. Furthermore, the indoor medical papers clearly suggest that the victim was not able to speak normally or properly although her general condition was good and she was conscious and oriented.

7.17 Now, if the deposition of Investigation Officer, examined as PW-13 - Jensinh Aatusinh Thakor, Exh. 53, is perused, he has stated in his examination-in-chief that on 05.08.1996, when he visited Suman Hospital where the deceased was admitted, he found the deceased unconscious and could not speak, and on 08.08.1996, when the deceased regained her consciousness and was able to speak, he recorded the statement of the deceased, which is given Mark 'B', 9/4. He also sent a Yadi, Exh.29 to the Executive Magistrate after getting endorsement of the doctor with regard to



consciousness of the deceased. However, in his cross-examination, he has denied the fact that the deceased had a hoarse voice and she had difficulty in speaking.

7.18 Now, if the deposition of DW-2 Ashaben Bhavsar, Exh.65 is perused, it appears that she was admitted in the civil hospital in E-3 Ward, where the deceased was also admitted. As per her deposition, the deceased was asking for a pen and a paper from the doctor by making gesture as she could not speak, therefore, she went to her and gave her a pen and a paper. The deceased had wrote about the innocence of her in-laws and then asked this witness to hand over the paper to her father-in-law and ultimately, before handing over the same, she signed the said paper. The said paper/chit was produced by the defence on record, which is marked as Exh.69. A bare perusal of the said paper/chit reveals that the deceased, under her signature, has written that her in-laws are innocent and they have demanded nothing and that, she has consumed acid on her own. The said paper/chit also bears signature of this witness namely DW-2 Ashaben Bhavsar.

8. At this juncture, the Court cannot lose sight of the fact that has come on record, which is crucial, namely, in the Yadi, Exh.29 sent to the Executive Magistrate by the PSI, Sardarnagar Police Station, requesting him to record the Dying Declaration, two endorsements of the doctor appear thereon, firstly, “**pt conscious, oriented**” and the time of making the same is: “**12-20 PM 8/8/96**”;



and secondly, “**pt conscious, oriented**” and the time of making the same is: “**1.20 PM 8/8/96**”. Now, if the Dying Declaration, Exh.30 is seen, the starting time of recording the same is: “**13-21 hours, 8-8-96**” and the time of concluding is: “**13-47 hours, 8-8-96**”. The Court is at a loss to understand as to how come the Executive Magistrate has mentioned the starting time as “**13-21 hours**” when the second endorsement of the doctor on the Yadi, Exh.29 itself, is of “**1.20 PM (13-20 hours)**”. This creates serious doubt about the veracity of the crucial document, namely, the Dying Declaration.

8.1 It is settled that Dying Declaration can be the sole basis for conviction without any further corroboration, provided it inspires full confidence and is trustworthy. It is also settled law that prior to recording of the Dying Declaration, it is imperative for the Executive Magistrate to verify and confirm that the victim is conscious, oriented and in a fit state of mind to depose and also to obtain the endorsement/certificate from the doctor prior to and after recording of the Dying Declaration of the victim.

8.2 Further, the defence witness and the paper/chit Exh.69 produced on record otherwise exonerates the present accused. Thus, in the considered opinion of this Court, when the ingredients of act of cruelty and harassment on account of demand of dowry, which are the genesis of the alleged crime are not satisfied, with such a shaky evidence in the form of different versions in the medical evidence, it is difficult to take a different



view than the one taken by the learned trial Judge after full-fledged trial and consequent acquittal of the accused persons.

8.3 We may profitably reiterate the well-settled law that when two views are possible from the evidence on record, the view which is favourable to the accused shall be taken into consideration by the Court.

8.4 Thus, upon going through the entire evidence on record, and on reevaluation and reappraisal thereof, and also considering the arguments canvassed by learned Additional Public Prosecutor for the State, in the considered opinion of this Court, there appears no perversity and/or manifest illegality committed by the learned trial Judge in arriving at the findings recorded which culminated into acquittal of the accused persons, which requires interference at the hands of this Court.

8.5 It may also be reiterated, as per the settled law, that it is not the duty of the appellate Court, when it agrees with the view of the trial Court on the evidence, either to restate the effect of the evidence or to reiterate the reasons given by the trial Court - An expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

8.6 The Court has also gone through the impugned judgment rendered by the trial Court. It appears that the trial Court has also



considered all the aforesaid evidence and held that the Dying Declaration has not been proved beyond reasonable doubt. Furthermore, considering the evidence of the relatives of the deceased, the allegations regarding cruelty and harassment meted out to the deceased for demand of dowry has not been proved. The prosecution has miserably failed to prove as to what had happened immediately preceding the occurrence which prompted the deceased to commit suicide. Thus, there is no evidence suggesting any involvement of the present respondents-accused in the alleged offence.

8.7 Upon reassessment of the entire evidence of the prosecution, this Court is of the considered opinion that the prosecution has failed to prove the case beyond reasonable doubt and the learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial Court is vitiated by some manifest error or illegality or that the decision is perverse or that the trial Court has ignored material evidence available on record.

8.8 On the overall appreciation of the evidence as well as considering the impugned judgment and order, this Court is of the considered opinion that the findings recorded by the trial Court do not suffer from any perversity or illegality. The findings recorded by the trial Court are absolutely just and proper, and in recording the same, no illegality or infirmity has been committed by the trial

Court. This Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court. Hence, no interference is warranted.

8.9 Before parting with the judgment, it would be apt to refer to the judgment of the Supreme Court in the case of *Mallappa v. State Of Karnataka, reported in (2024) 3 SCC 544*, wherein the Supreme Court has observed thus:

"26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-views theory has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action...."

9. On the facts and in the circumstances of the case, the Appeal fails, and the same is hereby dismissed. Records and proceedings be sent back to the concerned trial Court.

[Vimal K. Vyas, J.]

[P. M. Raval, J.]

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