

**SUPREME COURT OF INDIA**

Anil Kumar Gupta

Vs.

State of U.P.

Crl.A.No.388 of 2004

(B.Sudershan Reddy and Surinder Singh Nijjar,JJ.,)

09.03.2011

**JUDGMENT**

**B.Sudershan Reddy,J.,**

1. The appellant along with four others was tried for the charges punishable under Sections 498A and 304B, IPC and Section 3/4 of Dowry Prohibition Act, 1961. The learned Sessions Judge, Muzaffarnagar acquitted all of them of the said charges. The State preferred appeal against acquittal in the High Court of Judicature at Allahabad. The High Court confirmed the order of acquittal of all other accused except the appellant herein. The High Court accordingly convicted the appellant herein for the offences punishable under Section 498A, IPC and sentenced him to undergo rigorous imprisonment for two years with a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months, and for the offence punishable under Section 304B, IPC, he was sentenced to undergo rigorous imprisonment for ten years. The High Court also convicted the appellant for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.15,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year, whereas under Section 4 of the Dowry Prohibition Act, 1961, the appellant was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default of payment of fine, he should further undergo rigorous imprisonment for one month. The substantive sentences of imprisonment were however directed to run concurrently. Hence this appeal.

2. In order to consider as to whether the judgment of the High Court convicting the appellant for the offences punishable under the provisions referred to hereinabove suffers from any infirmity requiring our interference, it is just and necessary to notice the relevant facts in brief.

3. The appellant is the husband of the deceased Poonam. The incident is stated to have taken place in the intervening night of 6th/7th June, 1988 in Mohalla Kambalwala Bagh, Muzaffarnagar and a report was lodged on 7.6.1988 at 8.50 a.m. by Dharmendra Kumar Jain

(PW 1), father of the victim. The parents of the victim Poonam (deceased) are the residents of Khatauli, a town nearby Muzafarnagar. The deceased Poonam was married to the appellant Anil Kumar Gupta on 20th April, 1987. Soon after the marriage, the appellant and other accused (since acquitted) allegedly started harassing and torturing the deceased to bring more dowry. She was subjected to both mental and physical cruelty repeatedly. The deceased gave birth to a male child about four months before the occurrence and the same constituted another occasion for the appellant and other accused to demand cash and other valuable articles. Dharmendra Kumar Jain (PW 1), the father of the victim was not in a position to meet their demands. Consequently, the victim was subjected to further harassment. On 6th June, 1988 at about 11 a.m., the victim telephoned to her near relation, namely, Ram Kumar Vaish (PW 2) at Muzaffarnagar complaining about her torture and requested him to see her. Ram Kumar Vaish (PW 2) reached her house in the evening. He heard shrieks of the deceased Poonam coming out of the house. The appellant and his brother Ajay Kumar and sister were shouting inside the house loudly. PW 2 then rang the bell evoking Anil Kumar Gupta, the appellant to come out, but he did not allow him to meet the victim Poonam. PW 2, in turn, informed the complainant (PW 1) about all this at Khatauli at about 10 p.m. On 7.6.1988, the complainant (PW 1) along with his sons and PW 2 reached the house of the accused and found that none of them were present at home. He was informed by the neighbours that in the preceding night, the appellant, his brother and sister had taken Poonam to the hospital when her condition was serious and she was crying "MUJHE JAHAR DEKAR MAAR DIYA". On reaching the District Hospital, PWs 1 and 2 came to know that Poonam had breathed her last and her dead body was lying there. No accused was to be found in the hospital. PW 1 then lodged the FIR whereupon a case was registered and investigation was undertaken by the S.H.O. Shyam Singh Tomar (PW 8).

4. There is no dispute whatsoever that the victim was admitted in the hospital on 7.6.1988 at about 1 a.m. under a case of suspected poisoning. Dr. N.C. Tyagi (PW 7) had examined the victim. Her condition was very critical and she was unconscious. She had breathed her last at 1.40 a.m. Postmortem was conducted by Dr. Suresh Chandra (PW 5) on the same day at about 4 p.m. The following ante mortem injuries were found on her person:

- “1. Multiple pin-pointed abrasions with pin-pointed spots in an area of 2 cm. x 1 cm. on the dorsum of right big toe just behind the base of nail.
2. Multiple pin-point abrasions with pinpoint bleeding (clotted) spots on the dorsum of 4th toe just behind the base of nail.
3. Multiple pin-point abrasions with clotted blood on the dorsum of left great toe just behind the nail.
4. Multiple pin-point abrasions in an area of 1 cm. x 1 cm. on the front of left greater toe nail.
5. Multiple pin-pointed abrasions with clotted blood in front of nail of left 4th toe.

6. Multiple pin-pointed abrasions with clotted blood in front of left 4th toe.

7. Multiple pin-pointed abrasions with clotted blood in front of left 3rd toe. According to the medical opinion, the cause of death could not be ascertained, hence viscera was preserved. As per the report of the serologist, viscera contained insecticide poison.

5. The prosecution, in order to establish its case, altogether examined ten witnesses and the accused produced two witnesses in their defence. There is no direct evidence whatsoever and the entire case rests upon the circumstantial evidence. The trial Court, meticulously analyzed the evidence available on record and recorded the following findings:

“(i) The prosecution miserably failed to establish that while victim was being taken to hospital, she shouted that she had been administered poison. Ram Kumar Vaish (PW 2) did not make any statement to that effect before the police. However, in his evidence, he stated that the neighbours stated about the same. The fact remains that no neighbour has been examined to establish this fact.

(ii) The trial Court also found that there is no evidence that one day prior to her death, the victim spoke to PW 2.

(iii) The trial Court did not accept the evidence of Dharmendra Kumar Jain (PW 1), father of the victim on the ground that the evidence given by him is full of contradictions. As per the evidence of PW 1 and as well as in FIR, there is no mention of any demand for dowry before or after the marriage. The alleged demand was made only after the birth of a male child. The letters produced by the prosecution do not prove any demand for dowry. The letters (Exts. Ka-2 and Ka-3) do not mention that the accused have demanded any dowry either in the form of Camera or Scooter. On the other hand, letter (Ext. Ka-13) written by Smt. Poonam (deceased) from her father's house to the appellant only showed family matters, about the love and affection between the husband and wife and how painful it was to stay away from her husband.

6. The trial Court further found that the suicide note (Ext.Ka-78) stands proved to have been written by the deceased, as established by the Handwriting and Finger Print Expert.

7. The High Court, while reappreciating the evidence available on record, did not discuss that portion of the evidence which was taken into consideration by the trial Court. However, the High Court concluded that the deceased died an unnatural death by poisoning within about 14 months of her marriage with the appellant and there was consistent demand of dowry by him after the marriage. The High Court also observed that the victim was treated with cruelty by the appellant over the demand for dowry. The appellant was never satisfied even though some of the demands were met by the parents of the deceased. That after the birth of the child, the appellant further demanded VCR and Rs.20,000/- in cash and on non-fulfillment of

the demand, the appellant continued to subject the deceased to cruelty and harassment. Adverting to the circumstances, the High Court noted that the appellant prevented Ram Kumar Vaish (PW 2) to meet the deceased in the preceding evening when he reached their house on receipt of a telephone call from the deceased. One of the most important circumstance that was taken into consideration by the High Court is that the appellant was nearest to the lady and was undoubtedly with her on that fateful night and therefore, the inference is inescapable that it is the appellant who administered poison on her. The High Court further found that the appellant was engaged in manufacturing medicines and well acquainted with the property, composition, potentiality and effectiveness of the deadly poison responsible for the death of the lady. In order to show his innocence, he took her to the hospital on scooter where she collapsed within 40 minutes. Another circumstance that was taken into consideration by the High Court was that the appellant did not inform the police nor he informed the parents of the deceased about her death. Instead, he was not to be found in the hospital near the dead body of the deceased in the next morning when deceased's father and others reached there.

8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in *Ramesh Babulal Doshi Vs. State of Gujarat*<sup>1</sup> which was followed by this Court in *Dwarka Das & Ors. Vs. State of Haryana*<sup>2</sup>. The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In *Ramesh Babulal Doshi*, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then--and then only--reappraise the evidence to arrive at its own conclusions". (emphasis supplied)

11. In *Dwarka Das*, this Court following the decision in *Ramesh Babulal Doshi*, further observed that "there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very

comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

12. In *Chandrappa & Ors. Vs. State of Karnataka*<sup>3</sup>, this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.

13. Therefore, keeping the above principles in mind, we have to first ascertain whether there are any reasons recorded by the High Court in order to observe that the findings of the trial Court are unsustainable. The High Court in its judgment expressed that "the acquittal is wholly unjustified" and that the learned trial Judge failed to make proper analysis of the evidence adduced by the prosecution and other surrounding circumstances. There is no finding recorded as such by the High Court to the effect that the trial Court misread the evidence and its findings therefore were perverse in their entirety. The High Court was mainly impressed by its finding that the suicide note produced on behalf of the defence was found to be fabricated.

14. The defence, in its anxiety might have pressed some suicidal note into service which was ultimately found to be not acceptable by the High Court, but the High Court did not consider the rest of the circumstantial evidence that was taken into consideration by the trial Court for acquitting the accused. The High Court has mainly taken one singular circumstance into account, namely, that on the fateful night, the appellant alone was nearest to the victim and therefore, the inference is inescapable that it is he who administered poison to her. In the entire judgment, there is not even a whisper as to how the reasons recorded by the trial Court were perverse or erroneous.

15. It appears to us that the High Court very conveniently ignored the exchange of letters between the deceased Poonam and her mother which disclosed cordial relations between the two families. The prosecution did not find any letter by the deceased Poonam in response to her mother's letter when her mother's letters indicated receipt of Poonam's letters. There is no explanation forthcoming as to why the prosecution withheld that evidence. The benefit of doubt in this regard may have to go in favour of the appellant.

16. The High Court while ignoring the vital evidence available on record regarding the purchase of scooter by appellant himself with his own funds relied upon oral assertion made by PW-1 that parents of the victim paid a sum of Rs. 2,000/- for replacing the Camera and a further sum of Rs. 5,000/- for purchase of the scooter. The Trial Court, on appreciation of evidence available on record found that the scooter was actually purchased by the appellant himself, through raising a bank loan and in fact it was purchased much prior to the letter alleged to have been written by the victim to her parents. The appellant even got the scooter insured. This vital evidence regarding the ownership of the scooter has been completely ignored by the High Court and arrived at the conclusion as if the appellant demanded scooter from the parents of the victim as a dowry. The evidence available on record does not justify such a conclusion reached by the High Court. The High Court in this regard did not assign any reason as to how and why the conclusion arrived at by the trial court in this regard was not sound and perverse.

17. Similarly the High Court, on a very peculiar reasoning ignores the relevant piece of evidence that it is the appellant who took the victim to the hospital on his scooter to save her life. The High Court for no reason characterized the act of appellant taking the victim to the hospital as one of showmanship in order to avoid any suspicion of his involvement in the crime. According to the High Court the move was an anticipatory self-defence. It is difficult to discern as to on what basis the High Court arrived at such a conclusion. The High Court without any reason whatsoever concludes that the appellant took the victim on his scooter to the hospital only in order to show that as if he was innocent. The evidence of the duty doctor and entries in the hospital register in unmistakable terms reveals that it is the appellant who got admitted the victim into the hospital. If it is the appellant who removed the victim to the hospital on his scooter, then the version given by the prosecution (PW-2) that neighbours informed him to the effect that the victim Poonam came out of her house crying and shouting that she has been administered poison by the accused person becomes totally unacceptable. This vital portion of the evidence upon which the High Court relied comes from the statement of PW-2 which is undoubtedly an improvement since he did not state anything to that effect in his statement to the police. The fact remains that no neighbour was examined to justify that the victim Poonam came out of her house running and shouting that accused administered poison to her. The trial court meticulously examined the evidence available on record in this regard and accordingly found that the prosecution story of the victim revealing that she was administered poison was totally unacceptable. There is no reason given by the High Court as to why it did not agree with the findings of the trial court.

18. Be it noted that on the same evidence, the High Court did not find any case whatsoever against the other accused but found only the appellant guilty on the sole ground that on that

fateful night, it was the appellant who was proximate to the deceased and therefore, it is the appellant who administered poison to the deceased. The factum itself that the deceased and the appellant were together cannot be a ground to conclude that it was the appellant who administered poison to the deceased. The cause of death of the victim undoubtedly is on account of consumption of poison but there are no circumstances available on record based on which one could conclude that it was a case that someone forcibly administered poison.

19. In the same manner, the High Court recorded the finding that the appellant is very well versed in manufacturing medicines and knew their property, composition etc. The appellant looks after the accounts of a manufacturing concern. He has no acquaintance with any medical or chemical technology. We fail to appreciate as to the relevance of appellant's employment with a manufacturer of medicine has any bearing on his knowledge in manufacture of poison. It sounds very strange that High Court not only presumes that the appellant has not only special knowledge about preparation of poison but it is the appellant who administered poison to the victim

20. In our considered opinion, the High Court committed a serious error in arriving at its own conclusions without properly appreciating the findings and conclusions arrived at by the trial Court and the reasons assigned in support of those conclusions and findings. In the absence of any conclusion by the High Court to the effect that "the trial Court misread the evidence and the findings were therefore perverse", no interference was called for. The High Court virtually substituted all the findings and conclusions of the trial court but without assigning any reason whatsoever as to why and how those conclusions of the trial court were not sound or perverse in their nature. The High Court normally does not interfere with the findings of the trial court merely because there is a possibility of taking a different view on the available evidence on record. That is no reason to interfere with the judgment of the trial court.

21. We are satisfied that the trial court, for good and cogent reasons, acquitted all the accused including the appellant and it is the High Court which committed error in reversing the well considered judgment of the trial court so far as the appellant is concerned. Be it noted, that on the same evidence the High Court agreed with the trial court to acquit the other accused by refusing to rely on the prosecution story but a different yardstick has been applied so far as the appellant is concerned solely on the ground of his proximity with the victim on that fateful night. That singular circumstance in our considered opinion is not enough to conclude that the appellant forcibly administered the poison to the victim. Even the medical evidence available on record does not support the conclusion. The view taken by the High Court to reverse the order of acquittal is unsustainable both in law and on facts.

22. The impugned judgment is accordingly set aside. The appellant is acquitted of all the charges. The judgment of the trial Court acquitting the appellant shall stand restored. The bail bond executed by the appellant shall stand cancelled.

23. The appeal is allowed.

Judgment Referred.

<sup>1</sup>(1996) 9 SCC 0225

<sup>2</sup>(2003) 1 SCC 0204

<sup>3</sup>(2007) 4 SCC 0415