NEUTRAL CITATION
2025:GUJHC:67856-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 603 of 2004

With
R/CRIMINAL APPEAL NO. 298 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
VALLABHBHAI JERAMBHAI GOTI & ORS.

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Appearance:
MR HARDIK MEHTA APP for the Appellant(s) No. 1
H B SHETHNA(2436) for the Opponent(s)/Respondent(s) No. 1,2,4,5
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 27/11/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Criminal Appeal No.603 of 2004 is filed by the appellant – State of Gujarat against the acquittal of accused no.1 in respect of offence punishable under Sections 306 read with section 114 Indian Penal Code and in respect of accused Nos.2 to 5 for acquittal for the offences

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punishable under Sections 498 A, 302, 306, 107 and 114 of Indian Penal Code passed by learned Sessions Judge, Surat in Sessions case No.264 of 1999 dated 04/02/2004. Whereas the Criminal Appeal No.298 of 2004 is preferred by the org. accused No.1 against the said judgment and order convicting accused No.1 under Sections 498-A r/w sec.107 of the Indian Penal Code and sentenced him to suffer R.I. for 3 years and to pay a fine of Rs.5,000/- in default to undergo R.I. for 6 months.

2. The brief facts leading to the filing of the present appeal are as under:

2.1. The prosecution case in short is that deceased Rasila was divorcee and again married to the org. accused No.1-respondent no.1 before 12 years of the fate of the incident. The deceased used to go to her parental house on some occasions and asking for gold ornaments as demanded by the respondent no.1 and as such she was given gold ornament two to three time by the father complainant. Initially, everything was going good for 5 years. Thereafter, deceased Rasila was harassed by beating by the respondents for meagre reasons. On interference of some respectable persons in the society, the deceased and respondent no.1 her husband went to Bhavnagar. They had two children and the children were not allowed to be with the deceased Rasila and they were sent to reside with their uncle respondent no.5 who was brother-in-law of deceased Rasila and therefore she had to stay alone. That before three months of the date of the incident, there was harassment to the deceased and again agreement was entered into and therefore again the deceased Rasila along with her children and husband respondent no. 1 came Surat to stay there. That on the date of the incident i.e. on 11.8.97 the complainant had a message regarding death of the deceased Rasila and when he went to Surat, he found dead body of deceased Rasila in the Civil Hospital, Surat.

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It is the case of prosecution that accused persons gave poisonous substance to the deceased and thereby committed her death and committed the offence as stated herein above.

2.2. On these facts, the complaint was filed with Katargam Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences. After investigation, chargesheet was filed before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try said offence, the case was committed to the Special Court and it was registered as Sessions Case No.264 of 1999 for trial. 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 under Section 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 a false case has been filed against him. After examining the evidence, witness testimonies and submissions from both sides, the learned Court below recorded the finding in favour of the respondent-accused acquitting him of the charges levelled against them.

3. We have heard learned APP for the appellant – State, learned Advocate Mr. Shethna, appearing for the org. accused No.1 and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Mr. J K Shah, learned APP appearing for the appellant – State submits that the impugned order of acquittal is required to be interfered with as the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that the learned Sessions Judge has believed the evidence with regard to

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harassment being meted out to the deceased by the org. accused No.1 however has acquitted other accused; but in fact, it is the case of prosecution that all the accused persons were harassing the deceased. It is therefore submitted that that all the accused persons, committed offences punishable under Sections 307, 504, and 34 of the Indian Penal Code.

4.1 It is further submitted that the evidence of the complainant, whose daughter was died on account of the consumption of poisonous substance at the hands of the accused, has been examined as Prosecution Witness No.1, and his complaint is on record at Exhibit 15. The complainant has provided strong and reliable evidence linking the accused with the crime in question. The testimony of the complainant is corroborated by the medical evidence of doctor who conducted the postmortem on the body of the deceased, as also the other piece of evidence i.e. relatives of the deceased who also deposed before the Court that deceased was subjected to mental harassment at the hands of the accused and in furtherance thereof, she was died due to consumption of poisonous substance.

4.2 Learned APP has further submitted that the prosecution has also proved the offence by leading substantial evidence and it has come on record to show that there was harassment at the hands of the accused persons and thus the deceased was died due to consumption of poisonous substance. However, the learned trial Court has not considered the said evidence and therefore it is submitted to quash the finding of the trial Court in this regard recording acquittal of the accused and to convict the accused for the said offence.

4.3 Learned APP has further referred to the evidence of the other material witnesses and submitted that from the evidence of the said witnesses, the involvement of the accused in commission of the crime is

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proved and therefore, this Court may interfere with the said finding and record the conviction. He would therefore submit to allow this appeal.

5. On the other hand, learned Advocate Mr.Shethna appearing for the respondent – org. accused No.1 has submitted that prosecution has failed to prove the charges levelled against the respondents – accused as the evidence of the complainant is doubtful and no plausible reasons are shown by the prosecution as to why their evidence ought to have been believed since they are the interested witnesses and thus their evidence are not reliable and believable. He has further submitted that there are omissions and contradictions in the evidence of the prosecution witnesses and the same cannot be ignored. It is submitted that merely because to convict the accused, the entire evidence though does not surface the involvement of the accused; cannot be said to have been believed and the learned trial Court has rightly appreciated the evidence of the prosecution witnesses and thereby come to the conclusion while acquitting the respondents – accused. He has further submitted that insofar as the offence alleged against the org. accused No.1 and his conviction therefor is concerned, no such witness has stated in clear terms; however the learned Judge has erroneously convicted the org. accused No.1 and therefore it is requested to quash and set aside the said judgment and order of conviction. He would further submit that since the elderly persons of the family have come together and issue was amicably settled between the parties and to that effect such affidavit has been filed by the brother of the deceased (PW No.5) as also the sister of the deceased (PW 7) as the org. complainant PW 1 father of the deceased girl was died and it has been stated that parties have settled the dispute inter se and it is prayed to pass appropriate order in the facts and circumstances of the case. He would therefore submit to dismiss the present appeal while confirming the judgment and order of acquittal passed by the learned trial

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Court and to allow the appeal filed by the org. accused No.1.

6. Heard the learned APP for the appellant – State and learned Advocate appearing for the respondents – accused and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, it is required to be noted that private parties i.e. org. accused side and org. complainant side have arrived at an amicable settlement between them and as stated and contended by learned advocate for the org. accused No.1 affidavit has been filed on behalf of the brother and sister of the deceased that they have no objection if the order of conviction and sentence is set aside or in the alternate the sentence undergone by the accused may be ordered to be confirmed as already undergone, as also the judgment and order of acquittal recorded in favour of other accused may not be disturbed.

8. Furthermore, if the evidence so recorded by the prosecution is examined, it emerges from the evidence recorded by the learned Court that marriage span of the deceased was more than 20 to 22 years as on the date of the incident; it was the second marriage of the deceased and out of the said wed-lock, they were having two children and previously due to some marital dispute she was returned and went back after consolidation by the elderly persons in the home. It appears that the deceased may have consumed some poisonous substance and the forensic science laboratory report also supports this possibility; however, the oral evidence on record by the prosecution does not directly establish this fact. In the testimony of the deceased's brother, Hasmukhbhai (Exhibit-23), he has stated that when the Laljibhai had told him that Rasila administered an injection and some unknown person told him this fact to him, he had some doubt in this

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regard. The prosecution, however, has not been able to produce accurate and reliable evidence. From the beginning, the prosecution attempted to show that all the accused had acted together under a pre-planned but no evidence regarding the injection has been presented, even though the prosecution initially tried to rely upon that theory.

9. Similarly, if the prosecution intended to suggest that the deceased seemed to have consumed poison, no poisonous substance or material was recovered during investigation. Even if the prosecution witnesses attempt to show that the accused were responsible for causing Rasila's death and contended that the offence is of murder, such an inference cannot be accepted unless they produce credible and legally admissible evidence supporting each element of the offence. The medical evidence also does not show that she had been administered any injection. To the contrary, the medical evidence does support the suggestion that she may have consumed poison. From the testimony of Dr.Medhrekhaben Makwana, it clearly emerges that if the poison was highly toxic and if the deceased had not been given timely gastric wash, the poison could cause severe internal complications, leading to rapid and almost immediate death. Therefore, under Section 302 of the Indian Penal Code, unless the prosecution proves that the accused committed the act intentionally, the offence of murder cannot be established.

10. In the present case, it has not been proved that the accused, acting with common intention, deliberately caused the death of Rasila. From the evidence so produced, it appears that after the marriage, certain demands for gold ornaments and dowry were made. According to the depositions of the witnesses examined by the prosecution, it also emerges that Rasila was not provided with sufficient household expenses, nor was she given any money for her personal needs. It further appears that there were

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frequent quarrels at the doorstep, and that although at the time of marriage she had brought 31 tolas of gold ornaments and various household articles, disputes continued between her and the husband thereafter. Despite these circumstances, the evidence suggests that Rasila and the accused had a relationship that showed some degree of mutual understanding. The prosecution witnesses have attempted to give evidence regarding the quarrels that occurred at the doorway, but those facts, even if true, do not establish any direct or conclusive link to the accused.

11. Furthermore, there is insufficient material to support the prosecution's inference that all the accused, acting with a common intention, instigated or assisted in bringing about Rasila's death. Even though no specific incident of cruelty has been proven during the first year of marriage, the allegation of dowry harassment may be accepted to some extent. However, the evidence also indicates that Rasila herself displayed obstinate behaviour, which at times contributed to disturbances in her marital home. It is also clear that the deceased and accused No. 1 were living together at Bhavnagar as husband and wife. Although one witness stated that the accused had beaten Rasila, the majority of the evidence indicates that the relationship between accused No. 1 and Rasila was not entirely strained. They were living together even at the time of the incident. It also appears that their children were not residing with them at the time of the occurrence. The prosecution has failed to establish, through reliable evidence, that accused No. 3 and accused No. 4 were present in the house at the relevant time. From the evidence of the complainant, it does not appear that accused Nos. 2 to 5 were staying in the house where accused No. 1 and the deceased were residing at the time of the occurrence. Although there may have been periods in the earlier years of marriage when accused Nos. 2 to 5 lived intermittently or

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separately, such past circumstances cannot be relied upon to conclude that they were present at the scene on the day of the incident.

12. Section 498A of IPC defines cruelty. The expression willful conduct and harassment to coerce her are two important aspects appearing in section 498A to decide that element of cruelty and harassment. The sporadic incident of ill-treatment by husband or her relatives does not fall within the expression of cruelty stated in clause (a) and harassment in clause (b) with view to coerce her. The conduct of accused i.e. her husband and /or near relatives must be wilful and there is likelihood that such wilful conduct will result in committing suicide or would be danger to life, limb or health of the woman.

13. In **Indrasingh M. Raol v/s. State of Gujarat 1999(3) GLR 2536**, this Court has dened and explained the expression cruelty and harassment in context to Sec.498A & 306 of the IPC. Relevant paragraph is para-6 & 7 which read as under :

> *"6. The expression "cruelty" means and implies harsh & harmful conduct of certain intensity and persistence. It, therefore, covers the acts causing both physical and mental agony and torture, or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miseries & woes strongly stirring up her feeling that life is now not worth living and she should die, being the only option left. The provision of Sec. 498A therefore, envisages intention to drag or force the woman to commit suicide by unabetted, persistent & grave cruelty. In one case, therefore, the facts on record may constitute the cruelty showing required intention and in another case, it may not. The concept of cruelty, therefore, is found different or diversifying from place to place, individual to individual, and also according to social and economical status of the person and several other factors. The Court has, therefore, to becoming more heedful, chary & wary, exert and ascertain the cruelty & required intention on the basis of materials on record and also on the basis of the culture, ordinary*

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sentimentality or sensitivity, capacity to tolerate, temperament, tendency, interse honour, matrimonial relationships, state of health, dissension, interaction, or conflicting ideology, will to dominate, utter disregard of one's own obligation or intractability or habits as well as customs & traditions governing the parties and other governing forces, provided necessary acceptable evidence in this regard is available on record.

7. The word "harassment" is not defined in Sec. 498A. The meaning of the word "harass" which can be found from the dictionary is to subject someone to unbearable, continuous or repeated or persistent unprovoked vexatious attacks, questions, demands, or persecutions, or brutality, or tyranny, or harm, or pain, or affliction, or other unpleasantness, or grave annoyance, or troubles. In short what can be said is that Sec. 498A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfil illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely usual wear and tear of matrimonial life. It should hardly be stated that the prosecution has to establish the charge beyond reasonable doubt. No doubt arithmetical accuracy is not expected from the prosecution, but it has to adduce such evidence which would be credible leaving no room to any reasonable doubt; and pointing to the guilt of the accused."

14. In **Manju Ram Kalita v. State of Assam , (2009) 13 SCC 330**, Hon'ble Supreme Court has explained the meaning of Cruelty in paragraph No.22 in following terms:-

"Cruelty for the purpose of section 498A, IPC is to be established in the context of sec.498A, IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity of seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. it is to be established that the woman has been subjected to cruelty continuously/persistently or atleast in close

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> *proximity of time of lodging the complaint. Petty quarrels cannot be termed as cruelty to attract the provisions of sec.498A, IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."*

15. In earlier decision in the case of **V.Bhagat v. D.Bhagat, AIR 1994 SC 710** the Hon'ble Supreme Court in regard to word cruelty has observed following:-

> *"The context and the setup in which the word cruelty has been used in the section, seems, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."*

16. The cruelty therefore has to be understood in its ordinary sense of the matrimonial terms, yet general wear and tear of matrimonial life or vague allegations having no mentioning of specific incident of demand of dowry by the accused or hostile attitude of husband and/or his relatives cannot be termed as cruelty. Differences arising, momentarily between husband and wife also cannot be construed as cruelty or harassment. In order to establish and prove cruelty as stated in section 498A of the IPC, it must be in nature that it is arising from wilful conduct and it is intended to harm, harass or hurt the victim.

17. In the background of above law if we re-examine the evidence on record, what appears that no specific incident of cruelty or wilful conduct of the accused are narrated by any of the witnesses with unassailable corroboration.

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18. Insofar as offence in relation to section 306 with section 107 of IPC is concerned, the said provisions indicates that there must be some nexus between suicide of the victim and alleged offensive acts of the accused. In other words, prosecution is required to prove offensive acts of accused, which drive deceased to commit suicide. In addition thereto, there should be proximity of offensive acts, which led deceased to commit suicide. In the case of **Wazir Chand vs. State [AIR 1989 SC 378]**, Hon'ble Supreme Court has held as under:-

> *"Reading sections 306 and 107 together, it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under section 306 for abetting the commission of suicide. A plain reading of the provisions shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide."*

19. When offence of 498A is added with offence of section 306 of IPC prosecution is obliged to prove that cruelty was meted out to the deceased being result of wilful conduct of accused and same has driven deceased to commit suicide. Prosecution is also burdened to prove proximity and/ or nexus between cruelty and act of suicide. The stray domestic quarrels perfunctory abuses by husband or in- laws are common in Indian society. Crude and uncultured behaviour by the husband towards his wife being mundane would not form and constitute abetment unless these acts or conduct singly or cumulatively are found to be of such formidable and compelling nature as may lead to commission of suicide. Abetment is mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused

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to instigate or aid in committing suicide, accused cannot be convicted under section 306 of IPC.

20. In **Ramesh Kumar vs. State of Chhatisgarh [2001 9 SCC 618]** the Hon'ble Supreme Court observed regarding instigation as under:-

> *"Instigation is to goad, urge forward, provoke, incite or encourage to do an act. To satisfy the requirement of instigation, though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an instigation may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.*
>
> *4.1 Close reading of evidence on record does not indicate any instigation on the part of the accused which driven the deceased to commit suicide. There is no active role played by the accused which is proved by the prosecution which may establish instigation or abetment for committing suicide."*

21. It is important to note that though the deceased consumed poisonous substance; but evidence so produced by the prosecution does not link the accused to such an act of the deceased of consumption of poisonous substance and evidence was uncorroborated by independent witnesses. This is evidence produced by the prosecution itself, but lacks voluntariness certification. In the instant case learned APP could not able to point out that how the finding recorded by the learned Sessions Court is patently illegal, perverse or contrary to the material on record or against the settled principles of law or his palpably wrong or manifestly erro-

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neous. Accordingly, the appeal filed by the State of Gujarat against the recording of acquittal of the accused deserves no merit.

22. The incident that immediately preceded the deceased consuming poison was trivial and formed part of the ordinary wear and tear of matrimonial life. Hurt by such incident, she might have consumed poisonous substance; but by any stretch of imagination, be construed as wilful conduct of such nature as is likely to drive a woman to commit suicide within the meaning of the Explanation (a) to Section 498-A IPC, nor does it constitute harassment with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security under clause (b) thereof. The prosecution has utterly failed to prove cruelty within the meaning of Section 498-A IPC. Apart from the solitary incident as emerging from the evidence on record, no specific instance of physical or mental cruelty has been established through any independent or corroborative evidence. The learned Sessions Judge has committed serious error of law recording conviction of the org. accused No.1 under Section 498-A of the IPC in the absence of proof of cruelty under Section 498-A IPC. Even otherwise, the material on record does not disclose any active instigation, intentional aiding or engagement in a conspiracy by any of the accused that directly led the deceased to commit suicide (Section 107 IPC). The act of the deceased in consuming poison appears to be a spontaneous reaction born out of her own sensitivity rather than any positive act of abetment on the part of the accused persons. Mere hurt feelings arising from a trivial domestic disagreement do not constitute abetment of suicide under Section 306 IPC. The reasons stated herein above indicate that the learned Sessions Judge has committed serious error in recording the conviction of the org. accused No.1.

23. As noted in the preceding paragraphs, the private parties i.e. org.

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accused side and org. complainant side have arrived at an amicable settlement between them and as stated and contended by learned advocate for the org. accused No.1 affidavit has been filed on behalf of the brother and sister of the deceased that they have no objection if the order of conviction and sentence is set aside or in the alternate the sentence undergone by the accused may be ordered to be confirmed as already undergone, as also the judgment and order of acquittal recorded in favour of other accused may also be not disturb.

24. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

> *"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 acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*
>
> *"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, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

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(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

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the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

25. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"*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 reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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."

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26. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned Sessions Court, Criminal Appeal No.603 of 2004 is filed by the appellant – State of Gujarat is dismissed. Whereas the Criminal Appeal No.298 of 2004 is preferred by the org. accused No.1 stands allowed. The judgment and order of conviction and sentence convicting original accused No.1 under Sections 498-A r/w sec.107 of the Indian Penal Code is quashed and set aside. Bail Bond shall stand cancelled. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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