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GIRISH SINGH

v.

THE STATE OF UTTARAKHAND

(Criminal Appeal No. 1475 of 2009)

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JULY 23, 2019

[SANJAY KISHAN KAUL AND K. M. JOSEPH, JJ.]

Penal Code, 1860: s.304B r/w s.34 – Dowry death – Appellants-accused were father and son – Victim deceased was wife of accused no.1 – Case against the appellants was that the deceased was treated with cruelty on account of dowry demand – The victim-deceased committed suicide by burning – Trial court held that prosecution failed to prove case against both the appellants-accused and ordered acquittal – Before High Court, appellants produced letters to show that there was no cruelty, however, High Court held that actual letters written by the deceased showing cruelty could not be produced as they were misplaced due to shifting of the house – High Court accepted the deposition given by prosecution witnesses as reliable and trustworthy and convicted the appellants under s.304B r/w s.34 – On appeal, held: The evidence of the mother of the deceased did not reflect that deceased ever complained about accused having harassed or beaten on account of dowry – Also, there were serious contradictions in the evidence of the father of the deceased – The two letters alleged to have been written by deceased were not produced by the prosecution on the plea that they were misplaced during shifting of the house – Even, if it is accepted that those letters were misplaced, the letters admittedly sent by the father of the deceased to his deceased daughter within few days of the receipt of the letters did not disclose anything about the harassment or cruelty or dowry demand – Even, in the letter written by father of the deceased to his son, there was no mention about any harassment or cruelty on account of dowry demand – High Court, however, still took the view that dowry related harassment was mentioned in the letters sent by the deceased which were not even produced – This approach, particularly, in an appeal against acquittal was clearly unacceptable – Case under s.304B, thus, not made out – Conviction set aside.

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Penal Code, 1860: s.304B – Scope of trial under – Appellants-accused were father and son – Victim deceased was wife of accused no.1 – Allegation that accused-father wanted to fulfil his lust with his daughter-in-law and as she did not agree he used to torture her and give her beating – The victim-deceased committed suicide by burning – High Court convicted the appellants under s.304B r/w s.34, however found that offence under s.306 was not made out – On appeal, held: The case of abetting suicide under s.306 r/w s.34 was found unacceptable both by the trial court and High Court and appellants were acquitted of said offence – A perusal of the impugned judgment showed that accepting the version of the prosecution witnesses, the High Court was persuaded to hold inter alia that the second accused also harassed her by asking her to provide liquor in the glass, and after taking liquor, in the state of intoxication, he used to ask her to sleep with him and on her refusal, subjected her to mental cruelty – High Court was in clear error in taking into consideration the evidence relating to harassment by the second accused on the basis that he, in the state of intoxication, asked her to sleep with him, and on that basis, she was subjected to mental cruelty – The said evidence is totally irrelevant and foreign to the scope of a trial for the offence under s.304B – It did not relate, at all, to the demand for dowry – High Court overstepped its limits in dealing with an appeal against acquittal – The view taken by the trial court was a possible one and did not merit interference by the Appellate Court – Evidence Act, 1872 – s.113B.

Appeal: Appeal against acquittal – Scope of interference – Discussed.

Criminal trial: Evidence – Chief examination and cross-examination of witnesses – Held: Truth in a criminal trial is discovered by not merely going through the cross-examination of the witnesses – There must be an analysis of the chief-examination of the witnesses in conjunction with the cross-examination and the re-examination, if any – The effect of what other witnesses have deposed must also enter into consideration of the matter – Evidence.

Allowing the appeals, the Court

HELD: 1.1 Section 304B is applicable if within 7 years of the marriage, death of a woman (the wife) takes place. The death

- A must be caused by any burns or bodily injury or the death occurs otherwise than under normal circumstances. It must be established that soon before her death, she was subjected to cruelty or harassment. The cruelty or harassment may be by her husband or any relative of her husband. The cruelty or harassment must be for, or in connection with, any demand for
- B dowry. Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of Evidence Act, 1872 provides for presumption as to dowry death. It is no doubt a rebuttable presumption and it is open to the
- C husband and his relatives to show the absence of the elements of Section 304B. [Paras 33, 34] [688-B-H]

- 1.2 The testimony of PW-1-sister of the deceased was to the effect that the deceased was influenced by spirit (*devta*) and the religious ceremony/prayers were held. The deceased became
- D normal after doing it. Still further, there was evidence that whatever madness the deceased used to do, it was taken care of by her in-law's house. PW4-father of the deceased completely contradicted himself, when in cross-examination, he stated that 5-6 days after marriage, when the first accused and the deceased came, he was on duty. PW2/wife of PW4, deposed that her husband
- E was working in Bombay. Earlier in cross-examination, PW4 deposed that when he was going back after 5-6 days of marriage, the first accused came to take the deceased and then the first accused said that television and VCR was not given. PW4 further stated that on this, the first accused said that deceased was having
- F flat nose. Thereafter, he stated that he went back to Bombay on his duty. This aspect was not considered at all by the High Court. This contradiction in evidence goes to the root of the matter. This proved that the prosecution case sought to be proved through PW4, was unacceptable. PW2 (wife of PW4) stated that the deceased was an illiterate. She did not know how to read and
- G write. On the other hand, PW4 deposed that the deceased could read and write letters. [Paras 36, 37, 38 and 39] [689-C, E-H; 690-A]

- 1.3 The two letters written by the deceased were not produced by the prosecution. The reason for non-production was
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that they were misplaced during shifting of the house. Even, accepting that those letters were misplaced, the question whether they contained allegation of harassment due to dowry, should have been resolved with reference to the letters admittedly sent by PW4 to the deceased within a few days of the receipt of the letters. Even, in the letter written by PW4 to his son, there is no mention about any harassment or cruelty on account of dowry demand. He only says to ask the deceased not to worry and not to send her even if anybody comes to call her. The High Court, however, still took the view that dowry related harassment was mentioned in letters sent by the deceased which are not even produced. This approach, particularly, in an appeal against acquittal is clearly unacceptable and cannot be approved. PW2-mother of the deceased, gave her statement that deceased never complained about accused regarding harassment or beatings or fact of giving less dowry. [Paras 42, 43, 46] [690-E-H; 691-A-B, E]

2. In an appeal from acquittal, the High Court has exceeded its jurisdiction in the appreciation of evidence as well as its approach to how the reliability of the witness is to be evaluated. A right of appeal is the creature of statute. Unless appellate power is expressly limited by additional conditionalities, the Appellate Court has power or rather is duty bound in the case of an appeal by the accused to reappraise the evidence. Even in an appeal against acquittal, the appellate court has power of reappraisal of evidence though subject to the limitation that interference would be in a case where the Trial Court's verdict is against the weight of evidence which is the same thing as a perverse verdict. In this case, the High Court referred to the contents of the chief examination of the witnesses. Thereafter, it was stated that the witnesses were cross-examined at length but nothing came out in evidence which created any doubt in his evidence. The witnesses were declared as being found reliable and believable. [Paras 47, 48 and 49] [691-F-H; 692-A-B]

3. Truth in a criminal trial is discovered by not merely going through the cross-examination of the witnesses. There must be an analysis of the chief examination of the witnesses in conjunction with the cross examination and the re-examination, if any. The

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- A effect of what other witnesses have deposed must also enter into consideration of the matter. On the one hand, the laudable object underlying Section 304B of the IPC is not to be lost sight of. On the other hand, the Appellate Court must not be oblivious to the fact that it is duty bound to find whether an offence is committed or not and such a pursuit also would embrace the duty of the court to apply its mind to the evidence as a whole and arrive at conclusions as to facts and inferences therefrom as well. After all, at stake for the accused are, priceless rights to liberty, reputation and the right to life, not only of himself but also his family members. The Law Giver, has contemplated that the High Court will be the final arbiter of facts and even of law. The jurisdiction of the Apex Court was deliberately limited to the extra ordinary powers it enjoys under Article 136 of the Constitution of India unless it be exercised under other provisions. The cause of justice and the interest of litigants would be better subserved if the Appellate Court takes a closer look, in particular of the cross-examination of the witnesses and analyse the same. [Para 50] [692-C-F]

4. It is true that the deceased died within seven years of marriage. Her death was due to burning and she committed suicide. It is not a case where the accused stood charged under any provision except Section 304B read with Section 34 of the IPC and Section 306 read with Section 34 of the IPC. The case of abetting suicide under Section 306 read with Section 34 of the IPC was found unacceptable both by the Trial court and the High Court and the appellants stood acquitted. The High Court was in clear error in taking into consideration the evidence relating to harassment by the second accused on the basis that he, in the state of intoxication, asked her to sleep with him, and on that basis, she was subjected to mental cruelty. The said evidence is totally irrelevant and foreign to the scope of a trial for the offence under Section 304B of the IPC. It does not relate, at all, to the demand for dowry. [Paras 51-53] [692-G-H; 693-A, D]

Upendra Pradhan v. State of Orissa (2015) 11 SCC 124 : [2015] 5 SCR 214 ; *Dilawar Singh and others v. State of Haryana* (2015) 1 SCC 737 : [2014] 7 SCR 844 ; *Gamini Bala Koteswara Rao and others v. State*

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of Andhra Pradesh Through Secretary **AIR 2010 SC 589 : [2009] 14 SCR 1** ; *K. Prakashan v. P.K. Surenderan* (2008) 1 SCC 258 : [2007] 10 SCR 1010 – relied on.

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Case Law Reference

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|---------------------------|------------------|----------------|----------|
| [2015] 5 SCR 214 | relied on | Para 28 | B |
| [2014] 7 SCR 844 | relied on | Para 29 | |
| [2009] 14 SCR 1 | relied on | Para 30 | |
| [2007] 10 SCR 1010 | relied on | Para 30 | C |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1475 of 2009.

From the Judgment and Order dated 12.11.2008 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 1254 of 2001 (Old No. 1988 of 1993).

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With

Criminal Appeal No. 1476 of 2009.

Sanjay Jain, Sudarshan Singh Rawat, Advs. for the Appellant.

Jatinder Kumar Bhatia, Krishnan Mishra, Advs. for the Respondent. **E**

The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. The appellant in Criminal Appeal No. 1475 of 2009 is the first accused and the appellant in Criminal Appeal No. 1476 of 2009 is the second accused. They were charged under Sections 306 read with Section 34 and Section 304B read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as ‘the IPC’ for short). The first accused is the son of the second accused. **F**

2. It Is the case of the prosecution in brief that the first accused used to treat his wife with cruelty on account of dowry demand. The same allegation was made against his father-second accused. It is also alleged that his father wanted to fulfil his lust with his daughter-in-law. She did not agree. The accused tortured her and gave her beating. The **G**

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A daughter-in-law committed suicide by burning herself on 05.06.1991. After complying with the formalities, the charge-sheet was filed against the accused. Prosecution examined nine witnesses and produced 17 documents. The Trial Court came to the conclusion that the prosecution failed to prove the case against both the accused. They were accordingly acquitted. Reliance is in particular placed on certain letters.

B 3. The appeal carried against their acquittal by the State was allowed by the High Court by the impugned order. The appellants were convicted under Section 304B read with Section 34 of the IPC. It was, however, found that offence under Section 306 read with Section 34 of the IPC was not made out against the appellants. The appellants were sentenced to seven years rigorous imprisonment.

C 4. We have heard learned counsel for the appellants and learned counsel for the State.

D 5. Learned counsel for the appellants would submit that no case is made out under Section 304B read with Section 34 of the IPC. He would submit that the High Court has reversed the verdict of acquittal and convicted the appellants ignoring the fact that the prosecution witnesses were unreliable. Prosecution witnesses, it is complained, have improved their version while they gave evidence in the witness box. Contradictions emerging from their previous statements under Section E 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Cr.PC’ for short), demonstrated that their testimony in court, which is relied upon by the High Court, could not be the basis for reversal of acquittal. Reliance is placed on certain letters as well.

F 6. We have also heard the learned counsel for the State who supported the judgment by pointing out that there was evidence to justify the conviction.

7. Before we consider the evidence, it is apposite that we set out the following findings rendered by the High Court:

G “22. ... Just before her death and after 5-6 months of her marriage, respondents-accused Girish Singh and Jodh Singh harassed the deceased Ishwari Devi for getting T.V. and V.C.R. in dowry and by non-fulfilling the demand of dowry, they were continuously beating her. Respondent – Jodh Singh also harassed her by saying her to provide him liquor in the glass and after taking H liquor in the state of intoxication, he was asking her to sleep with

him. On her refusal, she was subjected to mental cruelty. P.W. 4 A
Ganesh Singh has specifically stated that after coming back from
Mumbai, he came to know that respondent-accused Jodh Singh
after taking the liquor was trying to commit rape with Ishwari and
also used to harass her for T.V. and V.C.R., due to which his
daughter Parvati Devi, P.W. 2 Smt. Laxmi Devi, P.W. 3 Smt. B
Anandi Devi, P.W. 4 Ganesh Singh, and P.W. 5 Yasodh Singh, it is
proved beyond reasonable doubt by the prosecution that Ishwari
Devi was harassed for the demand of T.V. and V.C.R. in dowry
by the respondents after 5-6 months of marriage and they were
continuously making demand of dowry just before her death
Therefore, in view of the aforesaid discussion, it is proved that C
deceased Ishwari Devi died an unnatural death within 1 ½ years
of her marriage in the house of respondents where she was residing
along with her husband- Girish Singh and father in law Jodh Singh.
Deceased Ishwari Devi has died due to the burn injuries and her
body was found to be 100% burnt by the Medical Officer P.W. 9 D
Dr. P.K. Karnatak. As such, it has been proved by the prosecution
beyond reasonable doubt that the deceased was subjected to mental
cruelty by the respondents for the demand of T.V. and V.C.R. in
dowry and due to non-fulfilment of this demand and due to the
harassment and Marpit by the respondents, Ishwari Devi
committed suicide by burning herself in the house of her husband. E
Hence, in view of the above-said facts and circumstances of the
case, offence punishable u/s 304-B/34 of IPC is fully made out
against the respondents beyond reasonable doubt and learned
Sessions Judge has erred in law by acquitting the respondents' u/
s 304-B r/w Section 34 IPC."

8. Thereafter, the High Court proceeds to hold that the Sessions F
Judge erred in holding that the oral evidence is not supported by the
documentary evidence. After referring to Section 113B of The Evidence
Act, 1872, it is found that a presumption is to be drawn under the said
provision that dowry death has been caused. The finding by the Trial G
Court that the cruelty to his wife by the first accused is not proved, was
found to be incorrect. Still further, it is found that the Trial Court erred in
finding that the deceased ran away to her father's house where she
committed suicide. The deceased committed suicide in the house of the
appellants. In regard to the letters produced by the appellants to show
that there was no cruelty, it is found that the actual letters, which show H

A the cruelty, written by the deceased could not be produced due to the reason that as submitted by PW4 as they were misplaced due to the shifting of the house. The contradictions in the statements made by the prosecution witnesses also did not appeal to the High Court. It was found that the deposition given by the prosecution witnesses was reliable and trustworthy.

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9. Now, the time is ripe for us to consider what prosecution witnesses have deposed. PW1 is the sister of the deceased. She is shown as 14 years old on the date of deposition. She states that whenever the deceased sister used to come to her house, she used to tell her that father-in-law of the deceased and her husband complained about bringing no dowry and used to say that colour television was not given. Father-in-law would consume liquor and ask her to stand in front of her and sleep with him. When sister did not act like that, he used to beat her up. The mother of the witness used to pacify her and sent her to her matrimonial home. She had gone 7-8 times to see her sister to the matrimonial home. They used to ask her sister how she has come without dowry. In the cross-examination she would, *inter alia*, state as follows:

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The witness went to leave her sister last time to her matrimonial house about three months back. Her grandmother was also with her. No report was given anywhere regarding beating to grandmother by the accused. It is further stated that her sister was influenced by devta (religious spirit). Then her matrimonial home conducted religious ceremony for her. Her sister became normal after conducting it. Whatever madness her sister used to do; it was taken care of by her in-laws house. Only prayers were offered.

First accused did not have a good opinion about her sister. Her sister held him good but he did not respond. Sister used to tell about aforesaid facts of consuming liquor to stand in front of him and to sleep with him. Yashodh Singh is her uncle. These facts were not told to her uncle by them. She was examined by Kanungo (Officer). In regard to her statement under Section 161 of the Cr.PC that deceased was alright till 5-6 months after her marriage in the matrimonial home, she denied making that statement. She denies making the statement that the deceased used to run away to their house. She says she has stated to Kanungo that the second

accused used to beat her sister. She states that if the Officer has not written it, she cannot give the reason. About the sister weeping while complaining and such statement not being found, the witness says that she has told the Kanungo. The witness stated that she cannot say the reason why it is not written. Again, statement that her mother used to send back the deceased after pacifying her, it is stated that regarding the omission, it is her version that it was stated to Kanungo.

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(Emphasis supplied)

10. PW-2 is the mother of the deceased. She states, *inter alia*, that the appellants used to tell the deceased that television and VCR were not given in dowry. The accused appellant used to say to the deceased that she is *chipri* (flattened nose) and not of their choice. They used to threaten her that they will burn her by pouring kerosene oil if she did not bring television and VCR. These facts were disclosed to her by the deceased. The second accused, in the presence of the witness, said that if television and VCR were not brought, she would be finished even before coming of her father to house.

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11. Her daughter had told her that in the absence of the first accused, the second accused would ask her to serve liquor and to sleep with him after being drunk. When she refused, he used to beat her up and show her *khukri* (knife). Accused had seen the deceased before marriage. Thereafter, marriage was solemnized. They had not promised to give television and VCR. In the cross-examination, she would, *inter alia*, state that:

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Her daughter lived happily for 5-6 months of marriage. Thereafter, disturbances started. About one year disturbances remained. For about 5-6 months, deceased did not make complaint of her in-laws. The first accused used to roam in search of job. When deceased came to their house before her death, she was talked badly and was beaten up. Her statement was taken three times. She is an illiterate. She had told all the facts to Patwari in a statement. She cannot state the reason if the fact of television and VCR is not being written. She further says that deceased used to run away to their house after 5-6 months and they used to ask her not to run away. Her daughter loved her husband but he did not love her. She was confronted with the statement recorded

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- A by Patwari (Patwari performs the function of Police in certain parts of State of Uttarakhand) that she had never stated about harassment or beatings or bringing less dowry by her husband. She denied having made the statement. She is unable to tell the reason how the statement is written. She is again confronted with
- B the statement that she had no suspicion about abetment or killing or about any harassment by her husband. She would say that the statement has been wrongly written by the Patwari/Kanungo. Her husband has never come during vacations after marriage of the deceased before her death. He has visited twice after her death. She says deceased has written about her grief in one year
- C of her marriage to her father. She deposed that the deceased was an illiterate and she did not know how to read or write. Deceased had come a week before her death to their house. She had informed Yasodh Singh about the grief of the deceased and all the facts on getting an information about the death. She has stated about the deceased being called *chipri* and not being liked and about not bringing television and VCR to the Kanungo. She says, if he has not written, she has no reason to offer. Even the statement that second accused had stated in her presence that if the deceased did not bring television and VCR, then, she and her parents would be killed, was found missing in the statement and she has no reason for the same. She claims to have made the statement. Showing of *khukri* by the second accused is found missing for which she had no reason except saying that she has no reason for the same not being written. No doubt she claims to have stated no. She would say about the second accused consuming liquor and asking the deceased to sleep with him, she was told this by the deceased and PW1 has not told these facts to her (be it noted that PW1 has categorically stated that she has told these things to her mother, viz., PW2). Suggestion is made that the deceased became restless due to influence of evil spirit which is no doubt denied by the witness.

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(Emphasis supplied)

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12. PW-3 is the grandmother of the deceased. She repeated what is stated by PWs 1 and 2, namely, that accused after marriage, asked the deceased to bring television and she would say that they told her that she was *chipri*. They used to beat her up when she was sent back and

when she came home, she used to pacify her and sent back to her matrimonial home. Once when she went to leave the deceased, then, the second accused beat her 2-3 times on the chest of the granddaughter. Deceased used to tell her mother and sister that the second accused consumed liquor, asked her to serve liquor and thereafter to sleep with her. She would be beaten up when she refused to sleep. She was asked to bring television. In the cross-examination, it is stated that deceased was *chipri* since beginning. In-laws of the deceased had good behaviour with her till two months. The deceased lived properly till six months. She used to do all household works and she used to run away from matrimonial home after 6-7 months. Her daughter-in-law/PW2 did not go to the house of the second accused for patch up. Deceased had told the fact of demand of television 6-7 months before her death to her mother. In regard to there being no statement by her to the *Patwari* that second accused used to beat the deceased, she would say that she had told him. She says that the deceased has not told her that her father-in-law, with an intent to rape her, used to scold her. She had given statement to the *Patwari* that the deceased used to tell her mother about the father-in-law scolding her with an intent to rape her. Regarding the omission about the statement that in her presence, the second accused used to beat the deceased badly and that he was inclined to beat her up, she is unable to tell the reason. Upon her statement that the second accused beat the deceased three times on her chest and was inclined to beat her also, not being found on the statement, she is unable to give any reason. But according to her, she had told the *Patwari* this.

13. PW-4 is the father of the deceased. He would state, *inter alia*, that the first accused had asked to give television and VCR in marriage but he told that he could give only to the extent of his ability. Marriage was solemnized in his presence when he came during his yearly vacations. After 5-6 days of marriage, when he was going back and the first accused came to take the deceased, then, he told him about television and VCR not being given. After five months of normal behaviour, accused started misbehaving. His daughter could read and write a little and she had written about the television and VCR, bad language and abuse, in those letters (PW-2-mother of the deceased, on the other hand, be it noted, stated that the deceased was illiterate and could not read and write). On receiving information about the murder of his daughter, he was told about the complete incident by his family members. On this, he came to know about the second accused being drunk, trying to rape the

- A deceased and harassing for television and VCR and for that reason, his daughter committed suicide. Regarding letters written by his daughter, they were lost during shifting of house. Prior to the marriage of his daughter, the first accused has not seen the deceased. He has also not seen the first accused/his son-in-law before marriage. The first accused came on the second day after the *barat* returned (marriage gathering).
- B He came in the evening and returned next day morning. The first accused and the deceased came after 5-6 days after marriage. When they came after 5-6 days after marriage, he was on duty (in chief examination, it may be remembered that the witness says that when he was going back after 5-6 days of marriage, the first accused came to take his daughter
- C and then the first accused had complained that the television and VCR had not being given and the he stated that he had given according to his ability and if everything goes fine, it will also be done). He admits to have received only letter K3 from second accused. He states that there is no mention of harassment for dowry but they used bad language and harassment.
- D He admits to have written and signing two letters marked as Kha1 and Kha2 and is unable to explain why any fact of dowry harassment has not been written in these letters. He admits that these letters were written in response to letters by deceased. Confronted with the omission to mention about the demand for VCR, the coming of the son-in-law after 5-6 days after marriage and demand of dowry, he is
- E unable to state the reason why they are not written. According to him, he has told the *Kanungo*.

14. PW-5 is relative of the deceased. He says that deceased would tell all the facts to her mother about the harassment regarding television and VCR in dowry. He was also told; he says. He has deposed on
- F similar terms in regard to the second accused asking the deceased to sleep with her after being drunk and allegation regarding *chipri* (flat nose). He, however, in cross examination says that he had told the Officer about less dowry being given and about the demand of television and VCR. He says further that if it is not written, he cannot tell the reason. Similar is the position with regard to harassment by the first accused.

- G 15. PW-6 is *Patwari*. He has referred to the various steps taken by him in the investigation. He states in cross-examination that no complaint was received by him from the side of the family of the deceased.

- H 16. PW-7 is *Kanungo*. He states that he took the statements of the witnesses PWs 1, 2 and 5. Between 05.06.1991 to 08.06.1991 nobody

from the side had come and told him about the facts of harassment of deceased, demand of dowry and attempt to commit rape by the second accused. No evidence was given against the first accused before 19.06.1991. he says as follows: A

“11. I have taken the statement of Km. Parvati and she had stated that “My sister was hold good” she had also given the statement that “she use to ran away to our house” I produce all the three aforesaid true copy of statements in my handwriting and signatures. These have been marked as Exh. Kha- 3 to 5. B

12. Witness Laxmi had given the statement that “He never..... Said anything” She had also stated that “I have suspicion regarding him”, Both these marked true copy of these statements are in my handwriting and signatures. I submit the same. These are been marked as Kha-6 and Kha-7. C

13. Witness Anadi had stated to me, “I also went not gone”. The true copy of the statement is being submitted, which is in my handwriting and signatures. This has been marked as Exh. Kha-8.” D

17. The statement which was got marked in regard to PW1 reads as follows: E

“Deceased had never complained about her husband/first accused and she was happy always with him and the first accused also held her good.”

18. In regard to the statement proved in regard to Laxmi-PW2/ mother of the deceased, the actual statement is F

“she (apparently the deceased) had never complained about him regarding harassment or beating or any fact about giving less dowry.”

(Emphasis supplied) G

19. The further statement which is proved through PW7-Kanungo and attributed to PW2, reads as follows:

“I have no suspicion about the killing or getting killed the deceased or any harassment by him.”

(Emphasis supplied) H

A 20. PW-5, the uncle of the deceased is proved to have made the statement

“The husband of the deceased/Girish Singh is at his residence since one month and I have no knowledge about any harassment of deceased.”

B 21. Now, much reliance is placed by the learned counsel for the appellants on two letters which have been sent by none other than PW2-father of the deceased. These letters were sent admittedly by the father of the deceased to her as they were put to him in his examination and he admits the same. They read as follows:

C Letter dated 29.02.1991

“Dated: 29.02.1991

Om Ganeshay Namah:

Jai Bhagwati Mata

D Dear daughter, accept my hugs and blessings and love to both the son in laws and regards to Samadhi ji and love to all others at home. I am fine by grace of God and prays to supreme being for the same for your family. You may live happy always, then I may also feel the same. The reason for writing letter today is that how is the crop this year and if it is sown or not and what other professional things are going on? I received your letter and came to know about the well being and felt happy for the same. Do communicate in the same manner by writing letters. Blessings from younger brother Trilok and love from Ganesh. Pay my regards to elders and love to children. And daughter, you concentrate on your work and also pray daily to God. You will go during Holi. I am sending Rs. 100/- for you. I will bring something for you in box during vacations. Ask your mother to take medicines. I have sent money and to have treatment properly by going to Chamvat and do not do any heavy work and ask children to concentrate on studies and hygiene. I will come in vacations during May-June by God's grace. Inform complete news in letters and reply as soon as you receive this letter.

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Yours father

Sd/- (illegible)”

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GIRISH SINGH v. THE STATE OF UTTARAKHAND 683
[K. M. JOSEPH, J.]

Letter dated 20.03.1991 A

“Dated: 20.03.1991

Om Ganeshay Namah:

Jai Bhagwati Mata

Dear daughter, say my love to son in law and blessings to him. B
Love to younger son in law and regards to friend Samdhi ji. Also
say my regards in neighbourhood accordingly and also love to
children. I am fine here by grace of God and also prays to God for
your happiness. Also say regards and blessing from Trilok and
Ganesh. C

I received your letter for well being. I came to know about the
same after reading your letter. My heart felt very happy and hope
that in future also you would be writing letters. How the agriculture
is going on. Dear daughter, take care of your mother and also
keep going there and also ask her to take some medicines. Ask D
son in law to pass his X class. It is hard time and he has to be self
dependent. It is the duty of every person to do progress and you
are wiser enough. Ask him to be more responsible. I am finishing
off this letter and forgive for any mistake.

Reply soon. E

Yours father
Sd/-”

Address: G.S. Bisht
State Bank of Hyderabad
S.V. Road, Andheri West
Bombay” F

22. There is further documentary evidence, namely, letter dated
02.05.1991, sent by the second accused to PW4-father of the deceased.
It reads as follows:

“(Inland Letter) G

To,
Sh. Ganesh Singh Bisht
State Bank of Hyderabad
S.V. Road, Andheri West
Bombay. H

A

02.05.1991(overwrited)

Dear friend Samdhi ji, accept regards on behalf of your Samdhi Jodh Singh Mehta. Regards to younger Samdhi also and hello to all other friends.

B

I am fine here with the small child and hope the same for you. The main reason to write the letter is because the daughter-in-law (Bahu) had ran away to her mother's house on 02.04.1991 and had not returned even when I went to take her. Since I being father in law and like her father is duty bound to frighten her to keep away from all bad deeds. But she wants to be an independent

C

kinds therefore I am writing this letter to you for the first and the last time. I have not written any letter in good times, therefore, writing now. If you would have been in my place, you would have felt bad only what I have been hearing of her. I am an army man and have habit to command and control but the fact is not like this. If I say anything once to her, she reciprocates four

D

times. The son is not at home. What can I say? I have sold the buffaloes and had given up the agricultural land. Nobody listens to me but alright. You write a letter to your daughter from there only. Nothing is spoiled yet. If she wants to come, it is her house. I have nothing remain. She may live, cook and so, the way she wants. I will remain a spectator and not say anything. What else can I write?

E

You are also having all females in your house. Few things can be said there only. I cannot write all things in the letter. Please forgive me forever from today. We have not done good by marrying our children. We have done bad only. Forgive me and do reply this last letter of mine. I will be waiting for it.

F

Yours Samdhi

(illegible)

G

Jodh Singh Mehta

Friend, I have written this letter one month before but did not send it because I thought if good sense prevails, it would be better. But she wants to live separately. Wish to bring grocery from her

H

mother's place. We have been disgraced from all sides. I am in
your hands. The letter you find here was written on 05.04.1991. A

Yours

Jodh Singh (Sd/-)"

23. The last letter is dated 28.05.1991. This is sent by PW4-father
of the deceased in envelope addressed to his son-Kishore Kumar and it B
reads as follows:

Dated: 28.05.1991

My regards with folded hands to respected mother and convey
my hugs, love and blessings to children. Also convey regards to
elders and love and blessings to children on behalf of younger C
brother Ganesh. Blessings to dear daughter Ishwari.

By the Grace of God, we are fine here and pray to God for you
and family regarding the well being of everybody so that all of
you may live peacefully and happily and then I may also feel D
happy. How was rain this year? How was wheat crop this year?
I received your letter of well being and came to know about the
state of affairs. Grandson is getting employment. I felt happy to
pray to God that our family shall live happily. You cooperate with
the grandson in his work and get prayers done on behalf of me. I
am sending Rupees one thousand. I will come in month of July E
during vacations and for the reason that I may be present at home
during autumn season. I would be coming late for vacations. Ask
Ishwari not to worry and don't send her, even if anybody comes
to call her. Send the address of Jamai ji (son-in-law) to meet me.
Had examinations of children held? Ask them to concentrate on F
studies. Give news of home and village. How is the health of
mother of Ishwari? When the buffalo is going to deliver the calf?
Convey my regards to elder brother and love to children. Brother,
you fulfil all religious obligations (Devta Pujan) with respect and
pride. Do write the complete news of the family in the letter. You
are intelligent enough and I really feel that brother you are wise. G
I am bothering you due to difficult circumstances.

Reply soon.

Yours younger brother
Sd/- illegible"

H

A 24. It is relevant to remember that the father of the deceased has admitted that the letters were written dated 28.02.1991 and 20.03.1991 in reply to letters written by the deceased. The letters do not disclose about any harassment or cruelty or the dowry demand. In his deposition, PW4-father of the deceased would say that he is unable to say why any fact of dowry harassment has not been written in these letters. The letters written by the deceased have been misplaced according to PW4-father of the deceased.

B 25. The significance of the letters, admittedly written by PW4 to her deceased daughter and the absence of any complaint about dowry harassment, lies in the following categorical statement made by PW4-father of deceased, as follows:

C “Accused behaved normally with the deceased for five months and thereafter, they started misbehaving. My daughter could read and write a little and she had written two letters to me in this regard.”

D (Emphasis supplied)

E 26. The aforesaid letters written by the deceased are not made available on the ground that they had been misplaced. Certainly, if these letters, which are admittedly written by PW4-father of the deceased are in response to the letters written by his deceased daughter, the contents of letters written by the father do not bear out the case of conduct by the accused as is sought to be made out.

F 27. We have referred to the entire evidence. The Trial Court acquitted the accused. The jurisdiction of the Appellate Court, when it deals with such an order, is no longer *res integra* and is subject matter of catena of decisions of this Court.

G 28. In Upendra Pradhan v. State of Orissa¹, this Court took the view that if there is benefit of doubt, it must go to the accused, and in case of two views, the view that favours the accused, should be taken, which was more so where the Trial Court’s decision was not manifestly illegal, perverse and did not cause miscarriage of justice.

H 29. In Dilawar Singh and others v. State of Haryana², this Court took the view that court will not interfere with the verdict of acquittal

¹ (2015) 11 SCC 124

² (2015) 1 SCC 737

merely because on evaluation of evidence, a different plausible view may arise. Very substantial and compelling reasons must exist with the Appellate Court to interfere with an acquittal. A

30. In Gamini Bala Koteswara Rao and others v. State of Andhra Pradesh Through Secretary³, this Court accepted the contention of the appellant that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusions arrived at by the Trial Court. However, it is limited to those cases where the judgment of Trial Court was perverse. This Court went on to declare that the word “perverse”, as understood in law, has been understood to mean, “against the weight of evidence”. If there are two views and the Trial Court has taken one of the views merely because another view is plausible, the Appellate Court will not be justified in interfering with the verdict of acquittal (See K. Prakashan v. P.K. Surenderan⁴). B C

31. Section 304B of the Indian Penal Code reads as follows: D

“304B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or har-assment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. E

Explanation. —For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). F

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

32. Section 113B of The Indian Evidence Act, 1872 reads as follows: G

“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 has been

³ AIR 2010 SC 589

⁴ (2008) 1 SCC 258

A 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).”

B

33. Thus, it can be seen that the offence created by Section 304B requires the following elements to be present in order that it may apply:

C I. Within 7 years of the marriage, there must happen the death of a woman (the wife).

II. The death must be caused by any burns or bodily injury.

OR

D The death must occur otherwise than under normal circumstances.

III. It must be established that soon before her death, she was subjected to cruelty or harassment.

IV. The cruelty or harassment may be by her husband or any relative of her husband.

E

V. The cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

F 34. Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of The Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304B of the IPC, has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is no doubt a rebuttable presumption and it is open to the husband and his relatives to show the absence of the elements of Section 304B.

H

35. The foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

A

B

36. Admittedly, the deceased was influenced by spirit (*devta*). Religious ceremony/prayers were held. The deceased became normal after doing it. Still further, there is evidence that whatever madness the deceased used to do, it was taken care of by her in-law's house. The above facts emerge from the testimony of PW1-sister of the deceased herself. It is relevant to remember that it is a case of suicide. In the statement under Section 313 of the Code, the 1st accused in fact states as follows:

C

“The deceased was under influence of evil spirit. We conducted prayers two times but she could not be cured. Her mind was restless and she committed suicide and her family falsely implicated us.”

D

37. PW4-father of the deceased completely contradicts himself, when in cross-examination, he states that 5-6 days after marriage, the first accused and the deceased came, he was on duty. There is evidence when PW4 was working in Bombay (See the evidence of PW2/wife of PW4, who has deposed that her husband was working in Bombay). Earlier in cross-examination, PW4 has deposed that when he was going back after 5-6 days of marriage, the first accused came to take the deceased and then the first accused has said that television and VCR has not been given. PW4 says in chief examination that he had told the first accused that he has given according to his ability and if everything goes fine, it will also be done. PW4 further stated that on this, the first accused said that deceased was having flat nose. Thereafter, he states that he went back to Bombay on his duty.

E

F

G

38. We noticed that this aspect has not been considered at all by the High Court. This contradiction in evidence goes to the root of the matter. This proves that the prosecution case sought to be proved through PW4, is unacceptable.

H

A 39. PW2 would say that the deceased was an illiterate. She did
not know how to read and write. On the other hand, PW4 would depose
that the deceased could read and write letters. In fact, PW2 herself
stated that her husband-PW4 reached home after hearing about the
death of the deceased and told PW2 that he has received two letters of
B the deceased regarding harassment by the accused about dowry and
one letter of Jodh Singh-the second accused. It is here that two letters
which have been written admittedly by PW4-father of the deceased,
assumes critical significance.

C 40. PW2-wife of the PW4, as we have noticed, has deposed that
PW4 has told her that he received two letters from the deceased where
there is reference to harassment about dowry by the accused.

41. PW4, when questioned about the letters, admits having sent
the letters by way of reply to such letters written by the deceased.

D 42. We have already extracted the letters. It is amply clear that
there is no reference about any harassment or cruelty on account of
dowry in those letters. PW4, in fact, deposes that he cannot tell the
reason that why any fact of dowry harassment has not been written in
those letters. He admits that those letters were written in reply to the
letters written by the deceased. Significantly, the two letters written by
the deceased are not produced by the prosecution. The reason for non-
E production is, they were misplaced during shifting of the house. Even,
accepting that those letters were misplaced, the question whether they
contained allegation of harassment due to dowry, should have been
resolved with reference to the letters admittedly sent by PW4 to the
deceased within a few days of the receipt of the letters. In other words,
F a reasonable view would be that as reference to any harassment
regarding dowry is conspicuous by its absence in the letters written by
the PW4 to the deceased. There were no allegations of harassment on
account of dowry in the letters written by the deceased to her father-
PW4. In this regard, the High Court, in the impugned judgment, has
G proceeded to ignore this vital aspect and proceeded on the basis that the
averments made by the deceased of the cruelty caused by the appellants
were mentioned in the letters sent by the deceased and letters written
by PW4, are not helpful to resolve this issue. The last of the two letters
written by PW4-father of the accused is dated 20.03.1991. The death
took place on 05.06.1991. Even, in the letter written by PW4, letter
H dated 28.05.1991, in an envelope addressed to his son, there is no mention

about any harassment or cruelty on account of dowry demand. He only says to ask the deceased not to worry and not to send her even if anybody comes to call her. The High Court, however, still takes the view that dowry related harassment was mentioned in letters sent by the deceased which are not even produced. A

43. We are of the view that this approach, particularly, in an appeal against acquittal is clearly unacceptable and cannot be approved. B

44. Still further, through the Officer, statements actually made by the prosecution witnesses, have been proved. PW1-sister of the deceased, in her statement, stated as follows:

“The deceased had never complained about the first accused and she was happy always with him and brother-in-law also held her good.” This statement made by her to the Officer was also put to her. She merely says that she does not know how this fact was written in her statement. She says she has not given such a statement. She is unable to give the reason. C
D

45. The High Court, in regard to the said statement, gets over previous statement proved though Officer by stating that the statement was not given by the witness and that she was a girl of 13 years and further stated that her deposition in court inspires confidence.

46. Likewise, PW2-mother of the deceased, has given her statement that deceased has never complained about him regarding harassment or beatings or fact of giving less dowry. Still further, she is also proved to have given the statement that she had no suspicion of killing or getting killed by the accused or any harassment by him. Similar findings are rendered by the High Court in regard to the said statements. E
F

47. We would think that particularly in an appeal from acquittal, the High Court has exceeded its jurisdiction in the appreciation of evidence as well as its approach to how the reliability of the witness is to be evaluated.

48. We are troubled with another aspect highlighted by the facts of this case. A right of appeal is the creature of statute. Unless appellate power is expressly limited by additional conditionalities, the Appellate Court has power or rather is duty bound in the case of an appeal by the accused to reappraise the evidence. Even in an appeal against acquittal, the appellate court has power of reappraisal of evidence though subject G
H

A to the limitation that interference would be in a case where the Trial Court's verdict is against the weight of evidence which is the same thing as a perverse verdict. We need not catalogue the circumstances which are well-settled.

B 49. In this case, we notice that the High Court has referred to the contents of the chief examination of the witnesses. Thereafter, it has been stated that the witnesses have been cross-examined at length but nothing has come out in evidence which would create any doubt in his evidence. The witnesses are declared as being found reliable and believable. We have noted the facts in this case.

C 50. Truth in a criminal trial is discovered by not merely going through the cross-examination of the witnesses. There must be an analysis of the chief examination of the witnesses in conjunction with the cross examination and the re-examination, if any. The effect of what other witnesses have deposed must also enter into consideration of the matter. On the one hand, the laudable object underlying Section 304B of the D IPC is not to be lost sight of. On the other hand, it is equally important that the Appellate Court must not be oblivious to the fact what it is duty bound to find is whether an offence is committed or not and such a pursuit also would embrace the duty of the court to apply its mind to the evidence as a whole and arrive at conclusions as to facts and inferences E therefrom as well. After all, at stake for the accused are, priceless rights to liberty, reputation and the right to life, not only of himself but also his family members. The Law Giver, has contemplated that the High Court will be the final arbiter of facts and even of law. The jurisdiction of the Apex Court was deliberately limited to the extra ordinary powers it enjoys under Article 136 of the Constitution of India unless it F be exercised under other provisions. What we wish to emphasise is that the cause of justice and the interest of litigants would be better subserved if the Appellate Court takes a closer look, in particular of the cross-examination of the witnesses and analyse the same.

G 51. There is yet another important aspect in this matter. It is true that the deceased died on 05.06.1991 which was within seven years of marriage. It is equally true that her death was due to burning and she committed suicide. It is not a case where the accused stood charged under any provision except Section 304B read with Section 34 of the IPC and Section 306 read with Section 34 of the IPC. The case of H abetting suicide under Section 306 read with Section 34 of the IPC has

been found unacceptable both by the Trial court and the High Court and the appellants stand acquitted. A

52. A perusal of the impugned judgment of the High Court would show, that accepting the version of the prosecution witnesses, the High Court has been persuaded to hold *inter alia* that the second accused also harassed her by asking her to provide liquor in the glass, and after taking liquor, in the state of intoxication, he used to ask her to sleep with him. On her refusal, it was found that she was subjected to mental cruelty. Reference was made to evidence of PW4-father of the deceased that after he came back from Mumbai, he came to know that the second accused was taking liquor and trying to commit rape and also used to harass her for television and VCR due to which she committed suicide. B C

53. The High Court was in clear error in taking into consideration the evidence relating to harassment by the second accused on the basis that he, in the state of intoxication, asked her to sleep with him, and on that basis, she was subjected to mental cruelty. The said evidence is totally irrelevant and foreign to the scope of a trial for the offence under Section 304B of the IPC. It does not relate, at all, to the demand for dowry. D

54. As regards the demand for dowry, having regard to the state of the evidence, which we have elaborated, we would think that there was no occasion for the High Court to even raise a presumption that the deceased in this case has been subjected to cruelty or harassment in connection with any demand for dowry. It may be true and it is not disputed by appellants that as found by the High Court, the deceased died in the house of the accused. The fact that the High Court proceeded to arrive at finding of guilt in an appeal against acquittal by the Trial Court in the state of the evidence, which we have referred to, does not commend itself to us for acceptance. E F

55. In such circumstances, we would think that the High Court overstepped its limits in dealing with an appeal against acquittal and the view taken by the Trial Court appears to have arrived at, having regard to the state of evidence, to be a possible one, which did not merit interference by the Appellate Court. G

56. The upshot of the above discussion is that the appeals are only to be allowed and we allow the appeals and set aside the judgment of the High Court to the extent it convicts the appellants for the offence H

- A under Section 304B read with Section 34 of the IPC and the judgment of the Trial Court is restored. Since, during the course of the appeals, the appellants have been released on bail, the appellants need not surrender and their bail bonds stand discharged.

Devika Gujral

Appeals allowed.