State Of Karnataka vs Suvarnamma & Anr on 14 October, 2014

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Bench: Adarsh Kumar Goel, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.785 OF 2010

STATE OF KARNATAKA ..... APPELLANT

VERSUS

SMT. SUVARNNAMMA & ANR. ..... RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred against the Order dated 22nd December, 2005, of the High Court of Karnataka at Bangalore in Criminal Appeal No.1818 of 2004 setting aside the conviction of the accused- respondent Nos.1 and 2 passed by the Trial Court under Sections 498-A and 304-B of the Indian Penal Code ("IPC") and Sections 3,4 and 6 of the Dowry Prohibition Act, and sentence imposed including the sentence to undergo imprisonment for life for the offence punishable under Section 304-B of the IPC.

2. The case of the prosecution is that the deceased Soumya was married to the accused-Manjunath on 13th May, 1996. She was living with her husband and his mother co-accused Suvarnamma. She was not treated well and was harassed for dowry. On 31st August, 1998 at about 6.15 P.M., when her husband had gone out, the accused Suvarnamma brought kerosene can, poured kerosene on the deceased-Soumya and ignited the fire. She cried for help but Suvernamma put a rug on her. Thereafter, she shifted her to Chigateri General Hospital, Davangere. PW-19, Dr. Rajeshwari Devi, examined her. Next day in the morning of 1st September, 1998, at about 7 A.M., PW-26, V. Dhananjaya, PSI, in the presence of PW-19, Dr. Rajeshwari Devi recorded her statement and on that basis registered First Information Report. Soumya died on 3rd September, 1998. After investigation, the accused–the husband, the mother-in-law and the sister-in-law, were sent up for trial.

3. The prosecution examined 26 witnesses which included the family members of the deceased who gave evidence of demand of dowry and also the oral dying declarations made before them.

PW-22, Taluqa Executive Magistrate, was examined to prove the inquest report. The prosecution also examined the medical experts and the investigating officers. The accused denied the prosecution allegations and stated that they were taken out of their house by the police at 12 A.M. mid- night and arrested and were not aware of anything.

4. The Trial Court held that the offences were proved against the respondents-accused. However, co-accused Geetha, sister of Manjunath was acquitted. The Trial Court held that the demand of dowry soon before the death was established by the evidence of family members of the deceased which was reliable. The Trial Court rejected the plea that the prosecution had withheld the dying declaration (Exhibit D-7) recorded by PW-22 that the deceased caught fire accidentally; she had switched on the gas stove and had gone to change her clothes; when after returning back, she lit the match stick, as a result of which fire broke out resulting in accidental burn injuries.

5. On appeal, the High Court reversed the decision of the Trial Court for reasons which can be summed up as follows :

> "(i) According to PW-1, the brother of the deceased, the police had come to the hospital on the night itself on 31st August, 1998 and he gave a complaint to the police at that time, while, according to the Investigating Officer he came to the hospital on 1st September, 1998 and recorded the statement of the deceased.
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> (ii) The dying declaration recorded by PW-22 was not produced though recording of such statement was admitted by the PW-19, Dr. Rajeshwari Devi and the Taluka Executive Magistrate, PW-22.
>
> (iii) It was doubtful that the death was either homicidal or suicidal. The prosecution failed to discharge the burden to prove this fact. In absence thereof, the death had to be taken to be by accident.

(iv) There were discrepancies in the evidence regarding the demand and payment of dowry about the place where the negotiations took place, the persons present at the time of negotiations and the items of dowry demanded.

(v) The Trial Court had not recorded the statement under Section 313 Cr.P.C. properly resulting in prejudice to the accused."

6. We have heard learned counsel for the parties.

7. Learned counsel for the State vehemently submitted that the view taken by the High Court is perverse. Mere defects in the investigation could not be the basis for acquitting the accused, if sufficient evidence to prove the prosecution case was available on record. Minor discrepancies about details of demand of dowry were not enough to discredit the overwhelming evidence that the deceased was harassed for dowry soon before her death. A pragmatic approach was required to be adopted by Court in dealing with cases of death of a young bride to advance the policy of law. Though, the burden of proof is on the prosecution, the facts exclusively in the knowledge of the accused had to be disclosed by the accused. A false plea is to be taken as an additional circumstance against the accused. Oral dying declaration consistently made by the deceased before her brothers, sisters, mother and brother in-law also corroborated by the dying declaration (Exhibit P-10) recorded by the PW-26, the Police Officer after due certification by PW-19, Dr. Rajeshwari Devi, could not be thrown out only on the plea of the defence that dying declaration (Exhibit D-7) made by the deceased before PW-22, Executive Magistrate, in the presence of PW-19, Dr. Rajeshwari Devi was not produced. The evidence on record has to be appreciated in its entirety. It was submitted that the approach adopted by the High Court was clearly erroneous. If two dying declarations are recorded, the Court has to find out as to which one was genuine and truthful.

8. Learned counsel for the respondents, on the other hand, submitted that the acquittal recorded by the High Court could not be reversed merely on the ground that a different view could be taken. He submitted that the lapses of the investigation and discrepancies in evidence are serious enough to disbelieve the prosecution version and to give benefit of doubt.

9. We have given our anxious consideration to the rival contentions and carefully perused the evidence on record.

10. The questions which arise for our consideration are as follows :

(i) Whether the acquittal recorded by the High Court ought to be interfered with?

(ii) Whether the case against the accused stands established beyond reasonable doubt?

(iii) Whether the infirmities in investigation and discrepancies pointed out in the prosecution evidence make out a ground for rejecting the prosecution version?

(iv) Whether the plea of the accused is false and conduct of the accused in taking false plea can be treated as an additional circumstance against them?

11. Before dealing with the above questions, it may be necessary to refer to well known principles for appreciation of evidence.

12. The Court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilty and protect the innocent. Burden of proof is on the prosecution and the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all reasonable possibilities of accused being innocent. Once the prosecution probabilises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20 (3) of the Constitution incorporates the rule against self incrimination, the scope and the content of the said rule does not require the Court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.

13. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.

14. We may refer to the well known observations from decisions of this Court :

(i) Shivaji Sahabrao Bobade vs. State of Maharashtra[1] “8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate.

Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated

conformity and ingenious unveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the Court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."

(ii) Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat[2] "5. .....We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

> "(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
>
> (2) Ordinarily it so happens that a witness is overtaken by events.

The witness could not have anticipated the occurrence which so often has an element of surprised. The [pic]mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub- conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

(iii) Appabhai vs. State of Gujarat[3] "13. .....The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by [pic]calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J., speaking for this Court in Sohrab v. State of Madhya Pradesh observed: [SCC p. 756, SCC (Cri) p. 824, para 8] "This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered."

(iv) State of Haryana vs. Bhagirath[4] "8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Edn.) as follows:

> "It is difficult to define the phrase 'reasonable doubt'. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case. He says: 'It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.' "

10. In the treatise The Law of Criminal Evidence authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

> "The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire

> to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a [pic]conviction of the guilt of the accused, then there is no room for a reasonable doubt."

11. In Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793) this Court adopted the same approach to the principle of benefit of doubt and struck a note of caution that the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence demand special emphasis in the contemporary context of escalating crime and escape. This Court further said: (SCC p. 799, para 6) "The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt."

(v) Leela Ram vs. State of Haryana[5] "9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony (1985) 1 SCC

505). In para 10 of the Report, this Court observed: (SCC pp. 514-15) "10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

10. In a very recent decision in Rammi v. State M.P with Bhura v. State of M.P. (1999) 8 SCC 649) this Court observed: (SCC p. 656, para 24) "24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape [pic]from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny." This Court further observed: (SCC pp. 656-57, paras 25-27) "25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

> '155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him— (1)-(2) (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;'
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> 26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be 'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.
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> 27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. (AIR (1959) SC 1012)."
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> (vi) State of H.P. vs. Lekh Raj[6] "10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in State of Punjab v. Jagir Singh (1974) 3 SCC 277) held: (SCC pp. 285-86, para 23) "23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is

> an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the [pic]courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures." The criminal trial cannot be equated with a mock scene from a stunt film.

The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

(vii) Gangadhar Behera vs. State of Orissa[7] "15. To the same effect is the decision in State of Punjab v. Jagir Singh (1974) 3 SCC 277) and Lehna v. State of Haryana (2002) 3 SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "falsus in uno, falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co- accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of

evidence". (See Nisar Ali v. State of U.P. (AIR (1957) SC 366) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had [pic]been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab (AIR (1956) SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. (1972) 3 SCC

751) and Ugar Ahir v. State of Bihar (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. (AIR (1954) SC 15) and Balaka Singh v. State of Punjab (1975) 4 SCC 511). As observed by this Court in State of Rajasthan v. Kalki (1981) 2 SCC 752) normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar (2002) 6 SCC 81). Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."

(viii) State of Punjab vs. Swaran Singh[8] "10. The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the

evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers [pic]for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial.

11. In State (Delhi Admn.) v. Dharampal (2001) 10 SCC 372) it was held as under: (SCC pp. 376-77, para 13) "13. Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him."

12. In Jai Dev v. State of Punjab (1963) 3 SCR 489) it was observed thus:

> (SCR p. 510) "The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

13. In Bakhshish Singh Dhaliwal v. State of Punjab (1967) 1 SCR 211) a three-Judge Bench of this Court held that: (SCR p. 225 D) "It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section;"

14. In Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793) a three-Judge Bench of this Court considering the fallout of omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, widening the sweep of the provision concerning examination of the accused after closing prosecution evidence made the following observations: (SCC p. 806, para 16) "It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has [pic]occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been

questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction."

(ix) Zahira Habibullha Sheikh (5) vs. State of Gujarat[9] "37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their [pic]pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

40. ..... Consequences of defective investigation have been elaborated in [pic]Dhanaj Singh v. State of Punjab (2004) 3 SCC 654). It was observed as follows: (SCC p. 657, paras 5-7) "5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. (1995) 5 SCC 518).

6. In Paras Yadav v. State of Bihar (1999) 2 SCC 126) it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in Ram Bihari Yadav v. State of Bihar (1998) 4 SCC 517) if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh (2003) 2 SCC 518). "

(x) Mani Pal vs. State of Haryana[10] "12. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of

the guilty is no less than from the [pic]conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P. (2002) 4 SCC 85) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. This position has been recently reiterated in Joseph v. State of Kerala (2003) 1 SCC 465), Devatha Venkataswamy v. Public Prosecutor, High Court of A.P. (2003) 10 SCC 700, State of Punjab v. Phola Singh (2003) 11 SCC 58), State of Punjab v. Karnail Singh (2003) 11 SCC 271), State of U.P. v. Babu (2003) 11 SCC 280) and Suchand Pal v. Phani Pal (2003) 11 SCC 527)."

(xi) State of Rajasthan vs. Jaggu Ram[11] "27. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In Ram Gulam Chaudhary v. State of Bihar (2001) 8 SCC 311) this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference.

[pic]28. In Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC

681) a two-Judge Bench of which one of us (G.P. Mathur, J.) was a member, considered the applicability of Section 106 of the Evidence Act and observed: (SCC pp. 689-691, paras 13-15) "13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the houses should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions (1944) AC 315)—quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh (2003) 11 SCC 271.) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

> '(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.' [pic]15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation." Similar view has been expressed in State of Punjab v. Karnail Singh, State of Rajasthan v. Kashi Ram (2006) 12 SCC 254) and Raj Kumar Prasad Tamarkar v. State of Bihar (2007) 10 SCC 433).
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> 29. We are sure, if the learned Single Judge of the High Court had adverted to Section 106 of the Evidence Act and correctly applied the principles of law, he would not have committed the grave error of acquitting the respondent."

15. In the light of above principles, we may now examine the questions arising in the present case. Admittedly, the marriage of the deceased took place within seven years of her death. Her death is by burn injuries. There is evidence of demand of dowry soon before the death. Plea of the deceased who were living with the deceased is that they had no idea about the incident and were sleeping when plice picked them up at the night. During the trial, inference of death being an accident is sought to be drawn on the basis of alleged dying declaration (Exhibit D-7) coupled with the conduct of the prosecution in not producing the said dying declaration recorded by the Executive Magistrate, PW-22 in the presence of Dr. Rajeshwari Devi and also the fact that though PW-1 admitted that the police came to the hospital in the night itself, the stand of the Investigating Officer was that he came in the morning.

16. Does the alleged suppression or unfair conduct of the investigating agency absolve the Court of its duty to find out the truth? Though we are governed by the adversorial system, the Court cannot be a mute spectator, particularly in criminal cases and shun its primary duty of finding out the truth from the material on record. Thus merely showing that the prosecution withheld dying declaration (Exhibit D-7) could not be a ground for the Court not finding out the cause of death from the material on record and inferring that the death was accidental. Once dying declaration (Exhibit D-7) was produced even by defence, the Court has to go into the authenticity of two rival versions in the dying declarations. It was required to be ascertained whether (Exhibit D-7) was a genuine and reliable dying declaration or the oral dying declarations made before PW-1, PW-3, PW- 4, PW-5, PW-8, PW-14, PW-15 and PW-16 were more reliable in the circumstances on record.

17. What is surprising and wholly unacceptable is the stand of the accused who were husband and mother in-law of the deceased, living in the same house and that they had no idea that the deceased received burn injuries. This stand is clearly incompatible with the stand in Exhibit D-7 that the accused mother in-law of the deceased was very much present in the house and she shifted the deceased to the hospital. Even if the dying declaration (Exhibit D-7) was recorded, the fact remains that when it was recorded, even according to the said dying declaration, the deceased was accompanied by her mother in-law who is one of the accused. The deceased could not have made any voluntary and independent dying declaration in such circumstances as the influence of the accused could not be ruled out. According to the said dying declaration, she raised hue and cry when she received burn injuries which attracted her mother in-law and the tenant, while according to the mother in-law as well as the tenant they never heard such cries. There is no evidence of struggle or cries and the burn injuries are to the extent of 95%. In the case of an accident, the deceased would have tried to run away or escape. In these circumstances, there is hardly any possibility of accidental burn injuries. Extensive burns and other circumstances support the version of unnatural death. In these circumstances, the dying declaration (Exhibit P-10) is consistent with the circumstances on record while Exhibit D-7 is not.

18. The overwhelming evidence to prove the demand of dowry has been rejected on account of minor discrepancies about the place at which the negotiations took place or the persons in whose presence demand was made. Such minor contradictions are not enough to discredit the version of demand of dowry.

19. The High Court has not at all discussed the truthfulness or otherwise of the plea of the accused that though they were at home, they had no knowledge of burn injuries. This stand in their statement under Section 313 Cr.P.C. is clearly false. They were expected to know the incident and make disclosure thereof, absence of which was a circumstance against them. Mere contradiction of PW-1 admitting presence of the police in the night while I.O. stating that he came in the morning was not enough to discard the entire evidence. Even if dying declaration Exhibit D-7 was recorded and not produced, this could not absolve the Court from considering the truthfulness of available evidence. There is no justification to hold that death was accidental nor to reject evidence of demand of dowry. There is objective medical evidence which by itself shifts the burden on the accused to explain circumstances in which burn injuries were caused in their house. In these circumstances, any infirmity in the statement under Section 313 Cr.P.C. could not be treated to be fatal.

20. As a result of above discussion, it is clearly established that :

(i) Death of the deceased was within 7 years of marriage and she was subjected to harassment for dowry soon before her death. The death was in circumstances other than natural, and not accidental;

(ii) Mere lapse of investigating agency could not be enough to throw out overwhelming evidence clearly establishing the case of the prosecution.

(iii) False plea of the accused that they had no knowledge of burn injuries having been caused to the deceased was an additional circumstance against them.

21. In view of the above, the view taken by the High Court is clearly unsustainable.

22. In appeal against the acquittal, if a possible view has been taken, no interference is required, but if the view taken is not legally sustainable, the Court has ample powers to interfere with the order of acquittal.

23. Accordingly, we hold that the case against the accused stands fully established. The view taken by the High Court for acquittal is not a possible view.

24. The appeal is allowed. The order passed by the High Court is set aside and that passed by the Trial Court is restored with the modification that the sentence of imprisonment awarded to the accused under Section 304B will stand reduced to R.I. for seven years while maintaining sentence under other heads.

25. The accused may be arrested to serve out the sentence imposed by the Trial Court, as modified above.

……..…….J.
[V. GOPALA GOWDA]

.…..……..J.
[ADARSH KUMAR GOEL]

NEW DELHI
October 14, 2014

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[1] (1973) 2 SCC 793
[2] (1983) 3 SCC 217
[3] (1988) Supp SCC 241
[4] (1999) 5 SCC 96
[5] (1999) 9 SCC 525
[6] (2000) 1 SCC 247
[7] (2002) 8 SCC 381
[8] (2005) 6 SCC 101
[9] (2006) 3 SCC 374
[10] (2004) 10 SCC 692

[11] (2008) 12 SCC 51