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**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**ACQA No. 1096 of 2024**

**1 - Vikas Singhal S/o Ramesh Singhal Aged About 30 Years R/o Street Next To Naresh Bazar, Ward No. 28, Telipara, Police City Kotwali, District Bilaspur, Chhattisgarh (Brother Of The Deceased)**

**... Appellant**

**versus**

**1 - State Of Chhattisgarh Through Police Station City Kotwali, District- Bilaspur, Chhattisgarh**

**2 - Jyoti Singhal W/o Late Amit Singhal Aged About 29 Years R/o Village Bhitariyasahi, Devgarh, Police Station Devgarh, District Devgarh, Odisha (Wrongly Mentioned As Orrisa In The Judgement)**

**... Respondent(s)**

|                      |   |                              |
|----------------------|---|------------------------------|
| For Appellant        | : | Mr. Aniruddh Singh, Advocate |
| For Respondent No. 1 | : | Mr. Vedant Shadangi, PL      |
| For Respondent No. 2 | : | Mr. Anshul Tiwari, Advocate  |

**Hon'ble Shri Justice Sachin Singh Rajput**

**C A V Judgment**

1. The present acquittal appeal filed under the proviso to Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS, 2023”) has been preferred by the appellant who is the brother of the deceased challenging the legality, correctness and propriety of the judgment of acquittal dated 23.07.2024 passed by the learned 6th Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 34/2023 whereby the respondent No. 2 has been acquitted of the offence punishable under Section 306 of the Indian Penal Code, 1860.

2. The facts of the case in brief are that respondent No. 2 was married to the deceased Amit Singhal in November, 2020 and the said marriage was dissolved after about 6–7 months. It is also an admitted fact that in the year 2017 deceased Amit Singhal had married with one Priyanka Agrawal. Thus, the marriage of the deceased Amit Singhal with the accused Jyoti Singhal was his second marriage. It is also admitted that the accused Jyoti Singhal had been married twice earlier and her marriage with the deceased was her third marriage. In July, 2021 respondent No. 2 went to her parental home but she continued to quarrel with the deceased over the telephone, as a result of which the deceased remained mentally disturbed and distressed. On 23.09.2021 at about 2:00 a.m. on account of continuous cruelty and instigation, the deceased allegedly committed suicide by consuming aluminium phosphide pesticide and thereby committed suicide. He was taken to Apollo Hospital, Bilaspur where he died during the course of treatment. The death was reported to City Kotwali, Bilaspur where Crime No. 27/2021 (Ex. P/37) was registered and a merg inquiry was conducted. During the merg inquiry, statements of witnesses were recorded, the spot map was prepared, the suicide note was seized vide Ex. P/5, call detail records were obtained, the viscera report was seized and treatment-related documents were collected. Upon completion of the inquiry, a prima facie case under Section 306 of the IPC was found to be made out. Consequently, FIR Ex. P/29 under Section 306 of the IPC in Crime No. 337/2021 was registered at City Kotwali, Bilaspur. Thereafter, the investigation commenced. Statements of witnesses were recorded, various articles were seized. The seized articles were sent for forensic examination and the FSL report was received. In the viscera of the deceased, aluminium phosphide pesticide was detected. The suicide note and other seized documents were sent for comparison to the handwriting expert, who submitted his report vide Ex. P/35. Upon completion of the investigation, the charge-sheet was filed against respondent No. 2 before the Court of the Chief Judicial Magistrate, Bilaspur, who thereafter committed the case to the learned Sessions Court for trial, where it was assigned to the learned trial Court.

3. Respondent No. 2 was charged for the aforesaid offence. She denied the charges, pleaded innocence and claimed trial. In all, 37 prosecution documents were exhibited and 3 defence documents were marked. The statement of respondent No. 2 under Section 313 of the Code of Criminal Procedure was recorded, in which she claimed false implication and pleaded innocence.
4. After appreciating the evidence available on record, the learned trial Court acquitted respondent No. 2 of the charge under Section 306 of the Indian Penal Code, which has led to the filing of the present appeal.
5. Learned counsel for the appellant submits that the impugned judgment acquitting respondent No. 2 from the charge under Section 306 of the IPC is illegal, contrary to the evidence available on records and unsustainable in law. He further submits that the finding recorded by the learned trial Court holding that the prosecution failed to prove continuous instigation on the part of respondent No. 2 is erroneous and contrary to law. He also submits that it is not in dispute that the prosecution succeeded in proving that the suicide note was in the handwriting of the deceased; therefore, it could reasonably have been inferred that due to continuous threats, quarrels and instigation, the deceased was left with no option except to commit suicide. The learned trial Court failed to appreciate the evidence led by the prosecution including the testimony of the appellant who is the brother of the deceased in its proper perspective. He submits that in cases of this nature, direct evidence may not always be available, however, the circumstances proved on record against respondent No. 2 unambiguously establish that it was she who continuously threatened, quarrelled with and instigated the deceased to commit suicide. He further submits that an application under Section 432 of the BNSS, 2023 for taking further evidence on record has been filed along with copy of the suicide note (Annexure A/4), comprising with written complaint made by the deceased (Annexure A-2) to the police station just two days prior to the incident. The police report under Section 155 of the CrPC (Annexure A-3) and also annexed copy of settlement dated

18.01.2014 between the deceased and the respondent No. 2 has also been annexed as (Annexure A-5). He submits that the investigating agency ought to have seized and placed these documents on record as part of the charge-sheet, and had these documents been available on record, the outcome of the case might have been different. It is also submitted that although the suicide note itself was not exhibited only the seizure memo relating thereto was exhibited which has resulted in serious prejudice to the prosecution case. He further submits that either the appeal may be allowed and the respondent No.2 may be convicted appropriately or the application under Section 432 of the BNSS, 2023 may be allowed and the case may be remanded back to the learned trial Court for directing the prosecution to prove the documents before the learned trial Court. To buttress his submission placed reliance of Judgment of Hon'ble Supreme Court in case of **Brig. Sukhjeet Singh (Retd.) MVC v. The State of Uttar Pradesh and Ors., Criminal Appeal No. 148/2019; Zulfikar Nasir and Ors. v. State of Uttar Pradesh and Others, Crl. A. 574 / 2015; Chitresh Kumar Chopra SCC 605 V. State (Government of NCT of Delhi), (2009) 16 SCC 605; Shiv Shankar v. State and Others, 2025 SCC Online Del 4822 and Patel Babubhai Manohardas v. State of Gujarat, 2025 SCC Online SC 503.**

6. Mr. Vedant Shadnagi, learned counsel appearing for respondent No. 1/State supports the submissions advanced by the learned counsel for the appellant.
7. Per contra, Mr. Anshul Tiwari, learned counsel appearing for respondent No. 2 opposes the submissions and contends that the appellant had appeared before the learned trial Court and assisted the prosecution as an aiding counsel and thus had sufficient opportunity to place all relevant documents before the trial Court. He submits that even after a lapse of about one year from the filing of the present appeal, the application for taking additional documents on record has been filed which is highly belated. It is a settled position of law that a party cannot be permitted to fill up lacunae in its case at the appellate stage. Learned counsel further submits that the

present appeal is against an order of acquittal and therefore there exists a double presumption in favour of respondent No. 2. It is contended that an appellate Court ordinarily does not interfere with an order of acquittal unless the findings recorded are perverse or such as no prudent person could have arrived at. Although this Court possesses ample power to re-appreciate the evidence in an appeal against acquittal, such power is required to be exercised sparingly and with great circumspection. It is further submitted that the suicide note was already part of the charge-sheet was duly exhibited and was also taken into consideration by the learned trial Court. He further submits that for securing a conviction under Section 306 of the Indian Penal Code, the prosecution is required to establish the essential ingredients of Section 107 of the IPC. In the present case, the prosecution has utterly failed to prove the same. He further submits that the learned trial Court has meticulously examined and assessed the evidence in detail and after proper marshaling thereof, has rightly arrived at the conclusion that the charge under Section 306 of the IPC is not made out against respondent No. 2. He has taken this Court through the relevant paragraphs of the impugned judgment to demonstrate that the findings recorded by the learned trial Court are based on a proper appreciation of evidence and do not warrant any interference. He further submits that admittedly, about 1-2 months prior to the incident, respondent No. 2 was residing at her parental home in Odisha, therefore, it cannot be said that there was any continuous instigation during that period which could have led to the suicide of the deceased Amit Singhal. He submits that although call detail records were exhibited before the trial Court, they merely indicate that conversations took place between the deceased and respondent No. 2. The nature or contents of such conversations cannot be inferred therefrom and it cannot be presumed that the conversations were intended to harass or instigate the deceased. He further submits that a perusal of the testimony of PW-4 the mother of the deceased reveals that it was the family members of the deceased themselves who had sent respondent No. 2 to her parental home. Therefore, even assuming for the sake of argument that the relationship between the deceased and respondent No. 2 was

strained and that there were frequent disputes, the same stood settled once respondent No. 2 was sent to her parental home. He further submits that every individual reacts differently to circumstances and mere mental distress or depression suffered by the deceased cannot *ipso facto* be attributed to any act of instigation on the part of respondent No. 2. In support of his submissions he placed reliance upon judgments of the Hon'ble Supreme Court in case of **Ajitsinh Chehuji Rathod v. State of Gujarat and another** reported in (2024) 4 SCC 453 and in case of **Pramod Gupta v. State of M.P.** reported in 2013(3) M.P.L.J .

8. I have heard learned counsel for the parties and perused the documents available on record.
9. Heard on I.A. No. 2 an application under Section 432 of the BNSS, 2023.
10. Learned counsel for the appellant submits that by way of the present application, the appellant seeks to bring on record certain documents: (i) a copy of the written complaint made to the police (Annexure A-2), (ii) a copy of the NCR/certificate issued under Section 155 of the Code of Criminal Procedure (Annexure A-3), (iii) a copy of the suicide note (Annexure A-4) and (iv) a copy of the settlement order with Ankit Kumar Agrawal (Annexure A-5). It is contended that these documents are necessary for proper adjudication of the matter and therefore deserve to be taken on record.
11. Per contra, learned counsel for respondent No. 2 has filed a reply opposing the application. He submits that the aforesaid documents were available to the appellant during the trial and if they were intended to be relied upon, the same ought to have been produced and exhibited before the trial Court, thereby affording respondent No. 2 an opportunity to contest and cross-examine the same. He further submits that having failed to do so at the appropriate stage, the appellant cannot now seek to introduce these documents at the appellate stage.

12. Considering the rival submissions advanced by learned counsel for the parties, and particularly in view of the fact that the documents sought to be produced were admittedly available to the appellant at the time of trial, this Court is of the opinion that the appellant ought to have filed the same at that stage. At the appellate stage, such documents cannot be permitted to be taken on record, as it would prejudice the rights of the opposite party and defeat the procedural framework governing trial proceedings. Even otherwise the suicide note sought to be place on record by this application is already a part of record before the learned court and contents of it also discussed in the impugned judgment. In view of the aforesaid, the application is hereby rejected.
13. It is not disputed by any of the party that deceased Amit Singhal died by suicide. The prosecution examined 13 witnesses and exhibited 37 documents. The defence examined three witnesses namely Vikas Singhal (DW-1), Saroj Singhal (DW-2) and Ramesh Singhal (DW-3). Based on the statements of the witnesses, the testimony of PW-13 Dr. R.K. Markam and the FSL report (Ex. P-33), it is clearly proved that the deceased Amit Singhal committed suicide by consuming aluminium phosphide pesticide.
14. Vikas Singhal (PW-01) the younger brother of the deceased stated in his examination-in-chief (Para 4) that on 23.09.2021 at about 2:00 AM Amit Singhal consumed pesticide and informed him. Thereafter, he along with his brother Nitesh Singhal and mother Saroj Singhal took Amit Singhal to Apollo Hospital, Bilaspur for treatment where he died during treatment. An inquest (Panchnama) was conducted and his signatures appear on the inquest notice (Ex. P-02), inquest report (Ex. P-03). His testimony is supported by PW-03 Nitesh Singhal and PW-04 Saroj Singhal.
15. Dr. Manoj Rai (PW-07) stated that the deceased was brought in a critical condition and died at 12:52 PM due to shock and severe acidosis caused by consumption of Celphos pesticide. He proved the hospital intimation (Ex. P-14), acknowledgment (Ex. P-15) and death summary (Ex. P-13). His testimony remained unchallenged.

16. Shivkumar Sahu (PW-15) proved that upon receiving hospital information, Merg Intimation (Ex. P-22) was registered. The Investigating Officer SI Manish Kant issued notice under Section 175 CrPC (Ex. P-02), conducted inquest proceedings (Ex. P-03), prepared the post-mortem requisition (Ex. P-27) and after post-mortem, the body was handed over to Vikas Singhal vide memo (Ex. P-04). His testimony also remained unchallenged.
17. Dr. R.K. Markam (PW-13) who conducted the post-mortem on 23.09.2021 at about 4:30 PM found rigor mortis, cyanosis, injection marks and signs of congestion in vital organs. The stomach and intestines emitted foul smell with hemorrhagic changes and other organs were congested.
18. As per information from relatives, the deceased had consumed Sulphas poison. Viscera was preserved and sent for FSL examination. The cause of death was kept reserved pending the FSL report. The post-mortem report (Ex. P-21) opined the time since death as 3–6 hours. His testimony remained unchallenged.
19. PW-01 further deposed that the accused Jyoti Singhal used to call the deceased, create disputes and threaten to commit suicide and falsely implicate him and his family if divorce was pursued. Due to such conduct, the deceased was under mental distress and consumed pesticide on 23.09.2021 at about 2:00 AM. He further stated that on 26.09.2021, police recovered a pesticide-like substance and a suicide note from the deceased's room, wherein the deceased attributed his act to harassment by the accused. The suicide note was seized and the spot map prepared in his presence. The witness produced documents relating to the deceased's handwriting on 25.10.2021 and 30.04.2022 and a handwriting certificate was obtained on 13.06.2022. A Patwari map was prepared on 20.07.2022. His statements were recorded twice and he stated that prior to the incident, the deceased had approached the police regarding harassment and was advised to approach the Court. He admitted his signatures on the spot map (Ex. P-01), seizure memos (Ex. P-05 to Ex. P-07), handwriting certificate (Ex. P-08) and Patwari map (Ex. P-09). In cross-examination, he admitted having read his police statement before deposition. He acknowledged



that certain allegations made in Court regarding abuses and threats by the accused were not stated in his police statement (Ex. D-01) and no explanation was offered. He denied mental illness of the deceased but admitted that the deceased had undergone treatment for headaches in Mumbai.

20. This Court is to see whether the prosecution was able to bring home the guilt of the appellant under Section 306 of the IPC beyond reasonable doubt. In order to appreciate the argument advanced by learned counsel for the parties, the relevant provisions of the IPC that fall for consideration are as under:

**21. “Section 107. Abetment of a thing.**

A person abets the doing of a thing, who—

*First.*—Instigates any person to do that thing; or

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.”

**22. Section 306. Abetment of Suicide**

**8.01.** Section 306 of the Indian Penal Code penalises abetment of suicide. It reads as:

"306. Abetment of Suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

23. Section 306 of the IPC involves two essential elements: first, the commission of suicide by an individual and second the abetment of that act by another person or persons. To establish an offence under Section 306, it must be demonstrated that the accused played a role in the suicide through some direct or indirect action. For such involvement to be proved, at least one of the three conditions specified under Section 107 of the IPC must be fulfilled.

24. The provisions of Section 306 read with Section 107 of the IPC have been interpreted repeatedly, and the underlying principles are well settled. To constitute the offence of abetment of suicide, there must be clear evidence of direct or indirect instigation or encouragement by the accused, which is closely linked in time to the act of suicide. Such instigation should reflect a definite intention (*mens rea*) to

facilitate the suicide and must have placed the victim in a situation where they perceived no reasonable alternative but to take their own life.

25. It is, therefore, evident that the positive act of instigation is a crucial element of abetment. While dealing with an issue of a similar nature, the Hon'ble Supreme Court in case of **Ramesh Kumar Vs. State of C.G. reported in (2001) 9 SCC 618** laid down the parameters of what would be constituted to be an act of instigation. The Hon'ble Supreme Court observed as follows:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

26. It could thus be seen that Hon'ble Supreme Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. It has been held that in order to satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence, however, a reasonable certainty to incite the consequence must be capable of being spelt out. Applying the law to the facts of the case, the Hon'ble Supreme Court on to hold that a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

27. It has been further held by the Hon'ble Supreme Court is that "Each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record."
28. The Hon'ble Supreme Court in another case of **Mariano Anto Bruno Anr Vs. The Inspector of Police** reported in **2022 Live Law (SC) 834**, has held as under;
 

"In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."
29. Recently in case of **Kashibai & Ors.Vs. The State of Karnataka** reported in **2023 Live Law (SC) 149**, the Hon'ble Supreme Court observed as under;
 

"Mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC."
30. It has been further held by the Hon'ble Supreme Court is that "In order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established - In order to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also

there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.”

31. Yet in an another case **M. Mohan Vs. State represented by deputy superintendent of police** reported in **2011 (3) SCC 626**, it has been held by the Hon’ble Supreme Court as under:

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

32. In case of **Gangula Mohan Reddy vs State Of Andhra Pradesh** reported in **(2010) 1 SCC 750**, the Hon’ble Supreme Court while interpreting Section 106 held as under:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

33. It has been further held by the Hon’ble Supreme Court that “In order to convict a person under section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

34. In light of the above authoritative pronouncement, the evidence brought on record in this case is to be seen that the respondent No. 2 is not residing with her matrimonial house about 2 month before the incident. It is also not in dispute that after marriage between them, the quarrel has been started on pity issues.
35. This Court notes that the CDR report (Ex. P-24) merely establishes that telephonic conversations took place between the accused Jyoti Singhal and the deceased Amit Singhal including calls made by the deceased himself. However, no evidence has been adduced by the prosecution to disclose the substance of these conversations so as to demonstrate any element of instigation or incitement.
36. It is well settled that to sustain a conviction under Section 306 of the IPC, the prosecution must establish a positive and proximate act on the part of the accused which led the deceased to commit suicide. Mere allegations of harassment, without anything more, do not lead to an irresistible conclusion that the deceased was left with no option except to take his own life. In the present case, the allegations were omnibus in nature and directed against the respondent No.2 wife and she has already been acquitted by the trial Court. In such circumstances and in the absence of any cogent evidence satisfying the ingredients of Section 107 of the IPC, this Court finds that the prosecution has failed to discharge its burden.
37. This is an appeal against acquittal. Parameters to disturbed the finding of acquittal are settled by Hon'ble Supreme Court in catena of judgment.
38. Supreme Court in the case of **Rajendra Prasad v. State of Bihar, (1977) 2 SCC 205** observed in paragraph 13 as under -  
*13. When a trial court, with full view of the witnesses, acquits an accused after disbelieving direct testimony, it will be essential for the High court, in an appeal against acquittal, to clearly indicate firm and weighty grounds, from the record, for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of the accused. The High Court should be able to point out in its judgment that the trial court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an. appeal against acquittal, it is*

*not legally sufficient that it is just possible for the High Court to take a contrary view about the credibility of witnesses but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony. This is the quintessence of the jurisprudential aspect of criminal justice.*

39. In the case of **Bhim Singh v. State of Haryana, (2002) 10 SCC 461**,

Hon'ble Supreme Court thus held in para 9 as under -

*“9. Before concluding, we would like to point out that this Court in number of cases has held that an Appellate Court entertaining an appeal from the judgment of acquittal by the trial court though entitled to re-appreciate the evidence and come to an independent conclusion it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the Appellate Court comes to the conclusion that the view taken by the trial court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court. [See : M/s. Mohanlal Hargovind Dass vs. Ram Narain & Ors. (1979 (3) SCC 279), State of Punjab vs. Balraj Singh alias Chhajju (1978 (3) SCC 129), State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar (1981 (3) SCC 199) and Ram Kumar Pandey vs. State of Madhya Pradesh (1975 (3) SCC 815)]. In the instant case also we find that the trial court had taken a view which the High Court has not held to be either perverse, unreasonable or a finding which is not based on evidence, still on re-appreciation of the evidence, the High Court came to a different conclusion which on facts of this case and on the basis of the ratio of the law laid down by this Court in the above cited cases cannot be sustained.”*

40. Hon'ble Supreme Court in the case of **Chandrappa and ors. v. State of Karnataka, (2007) 4 SCC 415** laid down general principles relating to powers of the appellate Court while dealing with the appeal against an order of acquittal and observed in para 42 as under -

*42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

(1) *An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;*

(2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*

(3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

(4) *An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.*

41. Reference may be made to the judgment of Hon'ble Supreme Court in the case of **Rajesh Prasad v. The State of Bihar and anr., 2022 LiveLaw (SC) 33**, in which it was observed as below -

*“20. ....Section 378 of the Cr.P.C deals with appeals in case of acquittal. In one of the earliest cases on the powers of the High Court in dealing with an appeal against an order of acquittal the Judicial Committee of the Privy Council in Sheo Swarup vs. R. Emperor, AIR 1934 PC 227(2) considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under:*

*“16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of*

*criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.*

*But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”*

*It was stated that the appellate court has full powers to review and to reverse the acquittal.*

21. *In **Atley vs. State of U.P.**, AIR 1955 SC 807, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao J., (as His Lordship then was) in Sanwat Singh vs. State of Rajasthan, AIR 1961 SC 715:*

*“9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo 2022 LiveLaw (SC) 33 Swarup case afford a correct guide for the appellate court’s approach to a case disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) ‘substantial and compelling reasons’, (ii) ‘good and sufficiently cogent reasons’, and (iii) ‘strong reasons’ are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”*



*The need for the aforesaid observations arose on account of observations of the majority in Aher Raja Khimavs. State of Saurashtra, AIR 1956 SC 217 which stated that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial court was wrong.”*

22. **M.G. Agarwal vs. State of Maharashtra, AIR 1963 SC 200** is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as His Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial.”

23. In **Shivaji Sahabrao Bobade vs. State of Maharashtra, (1973) 2 SCC 793**, Krishna Iyer, J., observed as follows:

*“In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.”*

24. This Court in **Ramesh Babulal Doshi vs. State of Gujarat, (1996) 9 SCC 225**, spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:

*“While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions.”*

*The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In another words, there should not be an acquittal of the guilty or a conviction of an innocent person.*

25. In **Ajit Savant Majagvai vs. State of Karnataka, (1997) 7 SCC 110**, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the Trial Court:

*“16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:*

*(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.*

*(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*

*(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.*

*(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.*

*(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.*

*(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.*

*(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”*

26. XXXXXXXXXXXXXXX

27. This Court in **Chandrappa & Ors. (supra)** highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was

*reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.”*

42. In light of the judgments to sustain conviction under Section 306 IPC & parameters to upset the acquittal in appeal, this Court proceeds to see as to whether the acquittal of respondent No.2 is well found or not.

43. A careful perusal of the entire record further reveals that there is no specific instance or overt act attributed to respondent No. 2 which could be said to constitute intentional aid, instigation or conspiracy leading to the commission of suicide. There is no material to indicate any sustained course of conduct amounting to persistent cruelty or harassment of such a degree as would drive the deceased to take the extreme step. Neither the FIR, nor the statements of witnesses, nor the suicide note disclose any circumstance suggesting that the conduct of the respondent No.2 was guided by an intention to provoke or compel the deceased to commit suicide. It is not uncommon for matrimonial relationships to be marked by discord and differences, however, such disputes by themselves do not attract the penal provisions of Section 306 of the IPC in the absence of the requisite *mens rea* to instigate or incite the act of suicide. There are material omission in the police statement of the witnesses with regard to the cruelty or torture made by the respondent No.2. The trial court while marshaling the evidence has duly taken note of it. Apart from this the witnesses have admitted that the deceased was medically treated in Mumbai for migraine. Important aspect of the matter is that about 1-2 months prior to the date of incident, the respondent No. 2 has gone to her parental home at Odisha. Though call records are there to suggest same conversation between them, however that itself is not sufficient to point a finger towards respondent No. 2 to instigate deceased to commit suicide. Thus, on analysis of evidence the findings recorded by the learned trial Court acquitting the respondent No. 2 cannot be said to perverse or ignoring material evidence on record which would warrant an interference by this Court with due respect the judgments

relied by the learned counsel for the appellant in the given fact, circumstances & evidence available do not come to the any rescue.

44. In view of the foregoing discussion, this Court finds no infirmity in the impugned judgment warranting interference. The appeal being devoid of merit is accordingly **dismissed** and the judgment under challenge is hereby affirmed.

45. Record with copy of this judgment be sent back.

**Sd/-**

**(Sachin Singh Rajput)**

Judge

**H.Ansari**