(2016) 02 GUJ CK 0003

GUJARAT HIGH COURT

Case No: Criminal Appeal No. 652 of 2008

State of Gujarat	APPELLANT
Vs	
Jadav and Others	RESPONDENT

Date of Decision: Feb. 1, 2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) - Section 157, Section 293, Section 294, Section 311, Section 313#Dowry Prohibition Act, 1961 - Section 3, Section 7#Evidence Act, 1872 - Section 165#Penal Code, 1860 (IPC) - Section 114, Se

Citation: (2016) 02 GUJ CK 0003

Hon'ble Judges: M.R. Shah and Z.K. Saiyed, JJ.

Bench: Division Bench

Advocate: K.P. Raval, Addl. Public Prosecutor, for the Appellant; Dipen K. Dave and Laxmansinh M. Zala, Advocates, for the Respondent

Final Decision: Allowed

Judgement

,,

M.R. Shah, J.
1. Facts of this case illustrate a disquieting feature as to how the trial Court has committed a grave miscarriage of justice in",,

recording the acquittal of the respondents - accused by playing in the hands of the witnesses who were admittedly relatives of even victim.,,

2. As observed by the Hon"ble Supreme Court in the case of Zahira Habibulla Sheikh and Anr. vs. State of Gujarat and Ors. reported in , (2004)",,

4 SCC 158 and in the case of Zahira Habibulla Sheikh (5) and Anr. vs. State of Gujarat and Ors. reported in , (2006) 3 SCC 374 ""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 issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the,,

controlling question being the guilt or innocence of the accused. Since the object is to met 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. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a",,

spectator and a mere recording machine, by becoming a participant in the trial evincing intelligence, active interest and eliciting all relevant materials",,

necessary for reaching the correct conclusions, to find out the truth, and administer justice with fairness and impartiality both to the parties and to",,

the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in,,

relation to the proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial",,

and independent adjudicators"". The Hon''ble Supreme Court has further observed the Courts have always been considered to have an overriding",,

duty to maintain public confidence in the administration of justice often referred to as the duty to vindicate and uphold the ''majesty of law''. It is,,

further observed that ""due administration of justice has always been viewed as a continuous process, not confined to determination of the particular",,

case, protecting its ability to function as to court of law in the future as in the case before it."" It is further observed by the Hon''ble Supreme Court",,

that ""Courts have to ensure that the accused persons are punished. A criminal trial should not be reduced to be mock trials or shadow-boxing or",,

fixed trials."""",,

3. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the learned Additional City Sessions Judge,,

(Fast Track Court No. 2), Ahmedabad (hereinafter referred to as ""learned trial Court"") in Sessions Case No. 16/2007 by which the learned trial",,

Court has acquitted the respondents herein - original accused for the offences punishable under sections 498-A read with Section 114 of the,,

Indian Penal Code, 1860 (hereinafter referred to as ""IPC"") and sections 306, 304(B) read with Section 114 of the IPC and sections 3 and 7 of",,

the Dowry Prohibition Act, the State has preferred the present Criminal Appeal.",,

4. The brief facts of the prosecution case as narrated by the complainant are that, the complainant Premjibhai Gangaram Prajapati residing at",,

Visvakarma Society, House No. 3, Morbi and is working as a Cook. The complainant is having six daughters and one son. One of his daughter",,

Jalpaben aged about 21 years, was married with the accused No. 1 Jatin @ Jadav on 01.02.2005. It is further the prosecution case that after the",,

marriage, Jalpaben (deceased) was staying with all accused persons viz. husband, father-in-law Bhagvanjibhai, mother-in-law Madhuben and",,

sister-in-law Bhavnaben and husband"s brother Ashokbhai at her in-laws place Ganeshpark Society, Viratnagar. The husband of Jalpa was doing",,

diamond polishing work. It is further the case of the prosecution that after the marriage with the accused No. 1, Jalpa came give times to",,

complainant"s house and twice she came to complainant"s house. It is further the prosecution case that at the time of marriage, the complainant",,

given vessels, jewelers and other articles to Jalpa, wherever Jalpa came to complainant"s house and told her father that her father-in-law, mother-",,

in-law, sister-in-law and husband"s brother were causing mental and physical harassment to the deceased on petty household work. It is further",,

prosecution case that all accused persons were demanding money from the deceased and ten days prior thereto, only Jalpa came to complainant"s",,

house and stayed for four days and at that time, she told him the facts stated above. It is the case of the prosecution that thereafter, Jalpa went to",,

matrimonial house with Rs. 1,500/-. It is further the case of the prosecution that on 12.06.2006 at 11.00 hours in the morning, the complainant",,

received a telephonic call from someone on Mobile No. 9925124505 from Ahmedabad, wherein it was stated that condition of Jalpa was very",,

serious because of electric shock therefore, said person called him there on receiving the message he visited the place of incident and found the",,

dead body of Jalpa with ligature mark on the neck. It is also the case of the prosecution that all accused persons by demanding dowry and by,,

taunting caused mental, physical harassment to the deceased subjecting her to cruelty and induced her to commit suicide, Jalpaben has committed",,

suicide by hanging herself. Therefore, it was alleged that all the accused persons induced the deceased to commit suicide and thereby committed",,

the offence punishable under sections 498-A, 306, 304(B) read with section 114 of the IPC and sections 3 and 7 of the Dowry Prohibition Act.",,

4.1 That father of the deceased registered the FIR with Odhav Police Station, which was registered as CR No. I-245/2006, which was recorded",,

by Shri Rasikbhai Veljibhai Nandasan, PI, Odhav Police Station, who at the time of recording the FIR was already conducting investigation with",,

respect to Accidental Death Case No. 40/2006. At this stage it is required to be noted that initially the death of the deceased was registered as,,

accidental death being Accidental Death Case No. 40/2006, which initially was investigated by PSI Shri Pathan. PSI Shri Pathan sent the yadi to",,

the Executive Magistrate for inquest panchnama, to FSL, to Medical Officer for post-mortem. He also obtained the copy of the inquest",,

panchnama, post-mortem report. He prepared the panchnama of the place of offence. That thereafter the investigation was handed over to",,

Rasikbhai Veljibhai Nandasan, PI, Odhav Police Station to continue the investigation with respect to Accidental Death Case No. 40/2006. During",,

the investigation of the Accidental Death Case No. 40/2006, he recorded the statement of the father of the deceased which was recorded as",,

FIR/complaint. During the course of the investigation of the aforesaid FIR, he recorded the statements of concerned witnesses including the family",,

members of the complainant. He also prepared the panchnama of the recovery of the clothes of the deceased Jalpa. He sent the clothes of the,,

deceased to FSL. Having found a prima facie case against all the accused, he arrested all the accused.",,

Thereafter, after conclusion of investigation and having found a prima facie case against all the accused, the Investigating Officer filed the charge-",,

sheet against all the accused for the offences punishable under sections 498-A read with Section 114 of the IPC and sections 306, 304(B) read",,

with Section 114 of the IPC and sections 3 and 7 of the Dowry Prohibition Act in the Court of learned Metropolitan Magistrate, Ahmedabad. As",,

the case was exclusively triable by the learned Court of Sessions, the learned Magistrate committed the case to the City Sessions Court, which",,

was numbered as Sessions Case No. 16/2007 and which was transferred to the Court of learned Additional City Sessions Judge (Fast Track,,

Court No. 2), Ahmedabad. That the learned trial Court framed the charge against all the accused at Exh. 3 for the offences punishable under",,

Sr. No.,Details of documentary evidence,Exh. No.

1,Original Complaint,10

2,Yadi written to Executive Magistrate,13

3,Inquest Panchnama,14

4,Panchnama of the place of offence,15

5,"Panchnama of recovery of clothes of deceased and iron

wire",16

6,P.M. Note,17

7,P.M. Certificate,18

8,"Yadi written to FSL Officer to visit the place of offence

and opinion given regarding the same",19

9,Muddamal Dispatch Entry,20

10,FSL Receipt,21 & 22

11,Forwarding letter and opinion of FSL,23

12,Serological opinion of FSL,24

13,Forwarding letter of FSL,25

14,Opinion of FSL,26

15,Report under section 157 of CrPC,30

5.5 It is further submitted by Shri Raval, learned Additional Public Prosecutor appearing on behalf of the State that even the learned trial Court has",,

failed to note that the deceased had some injuries on face which as per the medical evidence were ante mortem. It is submitted that the injuries on,,

the face which were found to be ante mortem suggest that prior to the deceased committing suicide by hanging on fan, there was some ill-treatment",,

to the deceased.,,

5.6 It is further submitted by Shri Raval, learned Additional Public Prosecutor appearing on behalf of the State that even the learned trial Court has",,

materially erred in not properly appreciating the fact that the deceased died unnaturally within short marriage time i.e. 1 & 1/2 years of marriage,,

period and died in suspicious circumstances/unnatural death because of the dowry demand and ill-treatment and harassment.,,

5.7 It is vehemently submitted by Shri Raval, learned Additional Public Prosecutor appearing on behalf of the State that the learned trial Court has",,

failed to perform his duty to find out the real truth. It is submitted that the moment the parents of the deceased turned hostile because of the,,

settlement (even as agreed by P.W.-1 in his cross-examination that there is a settlement) and they did not support the case of the prosecution and,,

even the P.W.-1 did not support giving the FIR/complaint which was recorded by PI, Odhav Police Station, the learned trial Court ought to have",,

become more vigilant and ought to have make efforts to find out the real truth, rather than disposing of the trial in haste.",,

5.8 It is further submitted by Shri Raval, learned Additional Public Prosecutor appearing on behalf of the State that in the present case it appears",,

that because of P.W.-1 and P.W.-3 turning hostile and they did not support the case of the prosecution, the learned trial Court was in haste and",,

hurry in disposing the trial and in haste has concluded the trial within a period approximately 2 months and has acquitted all the accused. It is,,

submitted that in the present case the charge was framed on 28.05.2007, the deposition of P.W.-1, P.W.-2 and P.W.-3, who turned hostile were",,

recorded on one day i.e. on 04.06.2007, deposition of P.W.-4 was recorded on 15.06.2007, deposition of P.W.-5 on 11.07.2007 and the",,

further statement of the accused were recorded on 24.07.2007. Immediately within a period of 7 days thereafter the learned trial Court has,,

acquitted all the accused even by permitting the prosecution to drop other witnesses. It is submitted that therefore the learned trial Court has,,

disposed of the trial in haste and hurry and has acquitted the accused which has resulted into miscarriage of justice.,,

5.9 It is submitted that in the present case even the learned Public Prosecutor has also failed to perform his duties and to protect the interest of the,,

victim/deceased. It is submitted that both the learned trial Court as well as the learned Public Prosecutor have failed to appreciate the fact that the,,

offence committed by the accused was heinous crime against woman and the society and all efforts were required to be made by them to find out,,

the real truth and to see that all guilty are punished.,,

Making above submissions and relying upon the decision of the Hon''ble Supreme Court in the case of Patel Maheshbhai Ranchodbhai and Others,,

vs. State of Gujarat reported in , (2014) 14 SCC 657 and the decision of the Division Bench of this Court in the case of State of Gujarat vs. Patel",,

Maheshbhai Ranchhodbhai and Ors. reported in 2008 (3) GLR 2566 and in the case of State of Gujarat vs. Patel Ashwinkumar Ranchhodbhai,,

reported in , 2008 (2) GLR 1748 and one another decision of the Division Bench of this Court in the case of State of Gujarat vs. Amarsing",,

Rupsing Mahida & Others reported in , 2008 (5) GLR 3736, it is requested to interfere with the impugned judgment and order of acquittal passed",,

by the learned trial Court and consequently to allow the present First Appeal and convict all the accused for the offences punishable under sections,,

498-A, 306, 304(B) read with section 114 of the IPC and sections 3 and 7 of the Dowry Prohibition Act.",,

6. Present Criminal Appeal is vehemently opposed by Shri Laxmansinh Zala, learned advocate appearing on behalf of the original accused. It is",,

vehemently submitted by Shri Zala, learned advocate appearing on behalf of the original accused that in the facts and circumstances of the case",,

more particularly when the material prosecution witnesses did not support the case of the prosecution, the learned trial Court has not committed",,

any error in acquitting the original accused.,,

6.1 It is vehemently submitted by Shri Zala, learned advocate appearing on behalf of the original accused that in the present case the material",,

witnesses i.e. P.W.-1, P.W.-2 and P.W.-3, the parents of the deceased and uncle of the deceased did not support the case of the prosecution. It",,

is submitted that therefore, when the aforesaid material witnesses did not support the case of the prosecution and no other evidence was led by the",,

prosecution to prove the case against the accused, the learned trial Court has rightly acquitted all the accused.",,

6.2 It is vehemently submitted by Shri Zala, learned advocate appearing on behalf of the original accused that the prosecution failed to prove the",,

case against the accused with respect to any demand of dowry and any ill-treatment and/or harassment by the accused to the deceased for non-,,

fulfillment of the demand of dowry. It is submitted that therefore, when the prosecution failed to prove any demand of dowry and/or any",,

harassment and/or ill-treatment by the accused to the deceased for non-fulfillment of the demand of dowry, no case is made out against the",,

accused for the offence punishable under section 304-B of the IPC and also for the offences punishable under sections 498-A and 306 of the IPC.,,

It is submitted that therefore, no error has been committed by the learned trial Court in acquitting the original accused.",,

6.3 It is vehemently submitted by Shri Zala, learned advocate appearing on behalf of the original accused that as such present is an appeal against",,

the order of acquittal and therefore, unless and until the findings recorded by the learned trial Court are found to be perverse and/or contrary to the",,

evidence on record, the Appellate Court is not justified in interfering with the order of acquittal. In support of his above submissions, he has heavily",,

relied upon the recent decision of the Hon''ble Supreme Court in the case of Selvaraj vs. State of Karnataka reported in , (2015) 10 SCC 230.",,

Making above submissions, it is requested to dismiss the present Criminal Appeal.",,

7. Heard the learned advocates appearing on behalf of respective parties at length. We have re-appreciated the entire evidence on record. We,,

have also considered at length the impugned judgment and order of acquittal passed by the learned trial Court.,,

At the outset it is required to be noted that from the impugned judgment and order of acquittal passed by the learned trial Court it appears that,,

because of the settlement between the accused and the parents of the deceased (victim), the parents turned hostile and therefore, without",,

considering other evidences on record, in haste and hurry, the learned trial Court has concluded the trial and has acquitted the original accused",,

which has resulted into miscarriage of justice. From the impugned judgment and order passed by the learned trial Court it appears that the learned,,

trial Court has disposed of the trial and acquitted the accused in haste and hurry and thereby the learned Presiding Judge has failed to perform his,,

duty.,,

7.1 From the record it appears that P.W.-1, P.W.-2 and P.W.-3 whose depositions were recorded on a single day i.e. on 04.06.2007, turned",,

hostile. It is required to be noted that in the cross-examination, P.W.-1 specifically admitted that there is a settlement between him and the",,

accused. When the material witnesses turned hostile and more particularly when the P.W.-1 - original complainant who gave the complaint denied,,

having given any complaint, considering the fact that the offence involved was very serious and heinous crime against the woman, the learned",,

Presiding Judge ought to have become more vigilant and ought to have made all efforts to find out the truth.,,

7.2 Even in the present case it appears that even the learned Public Prosecutor who appeared on behalf of the State failed to perform his duty. It is,,

required to be noted that despite the fact that in the charge-sheet number of other witnesses were also cited, by examining them, all efforts ought to",,

have been made by the prosecution to prove the case against the accused, despite the fact that 3 material witnesses - parents and uncle of the",,

deceased turned hostile, however for whatever reason the learned Public Prosecutor gave the application to drop other witnesses and did not",,

examine any other witnesses and thereafter the learned trial Court has acquitted all the accused for the serious offences which are not against the,,

individual only but against the society also, solely on the ground that the witnesses who are examined do not support the case of the prosecution.",,

Thus, both the learned Presiding Judge as well as the learned Public Prosecutor seem to have failed to perform their duties i.e. to reach to the truth",,

and to punish the guilty. The role of the Presiding Judge and the role of the Public Prosecutor came to be considered by the Division Bench of this,,

Court in the case of Patel Maheshbhai Ranchhodbhai and Ors. (Supra). In a similar set of facts and circumstances dealing with a case where some,,

of the witnesses were declared hostile and despite that the learned Public Prosecutor submitted the application to drop other witnesses and,,

ignoring even the dying declaration, which was proved, the learned trial Court acquitted the accused and to that the Division Bench in paras 48 to",,

55 has observed and held as under:,,

48. We are at pain to observe that the role of prosecuting agency during the trial along with the Trail Judge appears to be dubious. We find that",,

besides Exhibit-14 dying declaration there was available evidence on record to prove the factum of cruelty and death of Renukaben, but was not",,

brought on record by the prosecuting agency, instead, all concerned were in hurry to finish the case in a day. After framing of the charge on 7th of",,

January, 2005, witnesses came to examined on the same day, further statements of accused were recorded, arguments were heard and judgment",,

impugned was delivered by Trial Judge on the same day. As stated here-in-above in para-2, on 1.1.2005, the prosecution requested to issue",,

witness summons upon witnesses shown in the charge-sheet at Sl. No. 1 to 6 and 16 to 23 and the witness summons were also issued. However,",,

on 07.1.2005, in all only five witnesses came to be examined by the Trial Court, and out of which, two witnesses, who were the relatives of the",,

deceased i.e. maternal uncle and maternal aunt of the deceased, turned hostile. Still, the prosecution submitted closing purshis stating that besides",,

whatever evidence was adduced by the prosecution, it did not intend to lead further evidence and declared the evidence of the prosecution to be",,

over and thereby dropped the other witnesses. It is prerogative of the prosecution to whom they should examine, but we are at pain to observe",,

that neither the learned Trial Judge nor the learned APP endeavoured to find out the truth by probing further the case. Instead, as soon as, the",,

witnesses, who were the relatives of the deceased, turned hostile, the Trial Court as well as the learned APP shut the doors towards their pious",,

and prime duty to search for the truth and the trial was closed in extreme hurry. It is not the law that when some of the witnesses turned hostile, the",,

court should abandon the search for the truth and the learned APP should become oblivious to put forward the whole prosecution case and instead,,

of adducing further evidence for search of truth, simply giving purshis in the case to lock the whole case in a cup board so as to ignore completely",,

the heinous crime like abetting a helpless woman (wife) to commit suicide, committed under the nose of the society. It appears that the Trial Court",,

has failed to perform its duties to reach to the real truth and to convict the accused. It is in the interest of justice that the trial should be conducted,,

on day-to-day basis, but at the same time it must be seen that justice must not be victimized at the unscrupulous treatment to the trial by",,

prosecuting agency. It becomes the duty of all concerned to bring on record sufficient evidence. Fortunately, in this case, valuable piece of",,

evidence i.e. dying declaration could be proved, beyond doubt and ultimately the case is proved.",,

49. True that criminal justice deals with complex human problems and diverse human beings. On account of relations, witnesses may turn hostile",,

and witnesses may resile when search for the truth is vigorously undertaken through instrumentality of criminal law. In trials, therefore, it becomes",,

the duty of the Judge presiding over a criminal trial, to appreciate the evidence from all corners, and if the evidence is not produced, though",,

available, then, the same could be produced. The courts exist for doing justice to the persons who are affected. As afore-stated, the crimes of such",,

nature like murder are affecting the society. The court is not merely to act as a tape recorder recording the evidence, overlooking the object of trial",,

i.e. to get at the truth. The courts cannot be oblivious to the active role to be played, for which there is not only ample scope but sufficient powers",,

are conferred under the Code. The court has a greater duty and responsibility to render justice in a case where it appears that the role of the,,

prosecuting agency itself is dubious. The courts are expected to perform its duties and functions effectively and true to the spirit with which the,,

courts are sacredly entrusted the dignity and authority and an alert judge actively participating in court proceedings with a firm grip on oars enables,,

the trial smoothly to reach at the truth. The interest of the parties in conducting the trial in such a way so as to gain success is understandable, but",,

the obligation of the Presiding Judge to hold the proceedings as to achieve the dual objectives i.e. search for truth and delivering pure justice cannot,,

be subdued. Wherever necessary, even courts are empowered to curb perjury. This is a fact that most of the witnesses coming in the courts",,

despite taking oath, make false statements to suit the interest of the parties. Effective and stern action is required to be taken on such a stand,",,

which may be taken upon the witnesses. The mere existence of penal provisions to deal with perjury would be a cruel joke with the society unless,,

the courts stop to take evasive recourse despite proof of the commission of the offence.,,

50. We find to our utter shock that so far as this Appeal is concerned, the role of prosecuting agency also appears stigmatic. Witnesses are the",,

eyes and ears of the justice. If the witnesses are incapacitated from acting as eyes and ears, the trial gets putrefied and paralyzed and cannot be",,

termed as a fair trial. It does not appreciable in the present case, why, in spite of the fact that, many witnesses were issued witness summons at the",,

instance of the prosecution, subsequently, only five witnesses came to be examined, out of which, two witnesses, the relatives of the deceased,",,

turned hostile, the learned APP submitted closing purshis, dropping the other witnesses by submitting that the prosecution does not want to lead",,

any further evidence. It is the cardinal principle of law of evidence that the best available evidence should be brought before the court. It is also,,

required to be noted that the prosecution submitted a list of 17 documents to be produced and exhibited. However, the learned Trial Judge",,

exhibited only four documents and other documents which are vital or important documents, were not exhibited by the learned Trial Judge, in spite",,

of that, the learned APP did not raise any objection and was satisfied with exhibiting of only four documents. Undoubtedly, therefore, the role",,

attributed to the learned APP in this trial has been eschewed in hurry of disposal of the trial or for some other reasons, which has resulted in failure",,

of justice.,,

51. It is known and cardinal principle of evidence that even if a major portion of evidence is found to be deficient in case residue is sufficient to,,

prove guilt of an accused, the conviction can be maintained. It is the duty of the court to separate grain from chaff in coming to the conclusion of",,

truth. It also becomes the duty of the court to take into consideration of relevant evidence available and courts are empowered to produce on,,

record such evidence if the prosecution failed in their duties to produce such evidence. The conclusion of a criminal trial must be the outcome of,,

cool deliberations and the scanning of the material by the informed mind of the Judge that leads to determination. How can a prosecuting agency or,,

concerned Trial judge afford to be so perfunctory in dealing with the criminal trial of grave crime of murder.,,

52. Necessary it is therefore to refer to the decision of the Apex Court in the matter of KRISHNA MOCHI AND ORS. vs. STATE OF BIHAR,",,

as reported in , AIR 2002 SC 1965. In paras 75 and 76, the Apex Court observed as under:",,

75. It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries",,

much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their",,

evidence is not found to be credible by Courts for manifold reasons. One of the reasons may be that they do not have courage to depose against,,

an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers,",,

which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination which may be",,

sometime because he is a bucolic person and is not able to understand the question put to him by the skillful cross-examiner and at times under the,,

stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces as astute lawyer, there is found to be",,

imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving",,

him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their",,

associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to,,

remain indifferent. It is most unfortunate that expert witnesses and the investigating agencies and other agencies which have an important role to,,

play are also not immune from decline of values in public life. Their evidence sometimes becomes doubtful because they do not act sincerely, take",,

everything in a casual manner and are not able to devote proper attention and time.,,

76. Thus, in a criminal trial a prosecutor is faced with so many odds. The Court while appreciating the evidence should not lose sight of these",,

realities of life and cannot afford to take an unrealistic approach by sitting in ivory tower. I find that in recent times the tendency to acquit an,,

accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as,,

to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the Court so long,,

it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, court should tread upon it, but if",,

the same are boulders, court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering",,

and society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim ""let hundred guilty",,

persons be acquitted, but not a single innocent be convicted"" is, in practice, changing world over and courts have been compelled to accept that",,

society suffers by wrong convictions and it equally suffers by wrong acquittals"". I find this Court in recent times has conscientiously taken notice of",,

these facts from time to time. In the case of Inder Singh and another v. State (Delhi Administration), , AIR 1978 Supreme Court 1091, Krishna",,

Iyer, J. laid down that ""Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some",,

infirmity when projected through human processes."" In the case of State of U.P. v. Anil Singh , AIR 1988 Supreme Court 1998, it was held that 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. One is as important as the other. Both are public duties which the Judge has to perform. In the case of State of West Bengal v. Orilal,,

Jaiswal and another , (1994) 1 Supreme Court Cases 73, it was held that Justice cannot be made sterile on the plea that it is better to let hundred",,

guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law. In the case of Mohan Singh and Anr. v. State of",,

M.P. , (1999) 1 Supreme Court Reports 276, it was held that the courts have been removing chaff from the grain. It has to disperse the suspicious",,

cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this",,

protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment",,

suspicions are created. It is onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should",,

be punished but on the other hand to see no person committing an offence should get scot free. If in spite of such effort suspicion is not dissolved, it",,

remains writ at large, benefit of doubt has to be credited to the accused.",,

53. In the case of ZAHIRA HABIBULLA SHEIKH AND ANR. vs. STATE OF GUJARAT AND ORS., reported in , (2004) 4 SCC 158, the",,

Hon"ble Supreme Court has occasion to deal with the role of the Public Prosecutor. It is observed by the Hon"ble Supreme Court that Public,,

Prosecutor is not supposed to be a persecutor, yet the minimum that was required to be done, to fairly present the case of the prosecution, was",,

not done. It is further observed that it is as much the duty of the Prosecutor as of the Court to ensure that full and material facts are brought on,,

record so that there might not be miscarriage of justice. It is further observed by the Hon"ble Supreme Court that the Prosecutor who does not act,,

fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts should not also play into the hands of such",,

persecuting agency showing indifference or adopting an attitude of total aloofness. In the present case, the Public Prosecutor appears to have acted",,

more as a defence counsel than one whose duty was to present the truth before the Court.,,

54. K. Lack of ''robust judging'' has stated in criminal courts need of the hour is ''robust judging''. The trial judge is the linchpin in every case, and",,

he has also its eyes and ears. He is not merely a recorder of facts but a purveyor of all evidence, oral and circumstantial. It is said by him that a",,

good trial judge needs to have a ''third ear'' i.e. hear and comprehend what is not said. When a material eye witness, whose beloved relative has",,

been murdered and who has identified the accused in his police statement says in his/her evidence at the trial that he cannot recall the faces or,,

names of anyone, this must obviously excite suspicion in the mind of a truth seeking judge; he (or she) must probe further and question the witness",,

(even if the prosecutor does not do so), as to why he had so stated before the police shortly after the incident and whether he had met with",,

anybody before giving evidence in court or had been tutored or compelled to say what had been just deposed to. No new law is required for this.,,

Only common sense and acquaintance with the facts of life. After having found that the witnesses who were already examined, the relatives of the",,

of the deceased turned hostile on 7.1.2005, the learned Sessions Judge ought to have been alerted. The learned Sessions Judge, on its own, ought",,

to have exercised the powers under Section 311 of the Code of Criminal Procedure and examined those witnesses who were already issued the,,

summon witnesses. As stated here-in-above, not only the learned Sessions Judge has failed to exercise powers under Section 311 of the Code of",,

Criminal Procedure, but even has not bothered to exhibit the relevant documentary evidences which were already on record, which if exhibited,",,

would have been fatal to the evidence. The learned Sessions Judge, ought to have appreciated that that his duty was to find out the truth of what",,

actually occurred.,,

55. Thus, in the present case, we found that prime and pious duty of the Trial Court to appreciate the evidence for the search of truth is",,

abandoned. However, in hurry of disposal of the case or for some other reason, the learned Sessions Judge has disposed of the trial and acquitted",,

the accused."""",,

It is reported that the aforesaid decision of the Division Bench has been confirmed by the Hon''ble Supreme Court in its decision reported in ,",,

(2014) 14 SCC 657. While confirming the aforesaid decision of the Division Bench, the Hon''ble Supreme Court has observed that Courts are",,

accepted to perform their duties and functions effectively and true to the spirit with which the Courts are sacredly entrusted with dignity and,,

authority. It is further observed that an alert Judge actively participating in Court proceedings with a firm grip on oars enables the trial smoothly to,,

reach at the truth.,,

7.3 In the case of Ashwinkumar Ranchhodbhai Patel (Supra), the Division Bench of this Court has deprecated such ""shutter down"" approach",,

adopted by the prosecuting agency resulting in failure of justice. In the said decision the Division Bench also discussed and considered the role of,,

the Presiding Judge. In paras 6 to 10 and 14 the Division Bench has observed and held as under:,,

6. Crimes in society are real and concrete incident actually occurs. Crimes are not fancy or imagination, which courts are called upon to decide.",,

Therefore, greater responsibilities are to be shouldered by courts while dispensation of justice. Prosecuting agency and investigation agency are",,

also important factor in criminal justice system. Each component must do justice to its role in doing justice to aggrieved persons. The crimes are not,,

affecting the individual, but influences the society as a whole and, therefore, the grave crimes are not against individual but against the society. The",,

law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of",,

the State. This could be achieved through instrumentality of criminal law. The contagion of lawlessness would undermine the social order and lay it,,

in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved through courts of law through",,

the role assigned to a court. Law as a cornerstone of the edifice of order, should meet the challenges confronting the society.",,

7. We are at pain to observe that neither the learned Trial Judge nor the learned APP endeavoured to find out the truth by probing further the case.,,

Instead, as soon as the witnesses, who were eye witnesses, turned hostile, the Trial Court as well as the learned APP shut the doors towards their",,

pious and prime duty to search for the truth and the trial was closed in extreme hurry. We find that the Investigating Officer, who is named in the",,

charge sheet, could not be examined by the learned APP nor such vigilance could be shown by the Trial Court to reach at the truth. It is not the",,

law that when eye witness turns hostile, the courts should abandon the search for the truth and learned APP should become oblivious to put",,

forward the whole prosecution case and instead of adducing further evidence for search of truth, simply giving purshis in the case to lock the whole",,

case in a cup board so as to ignore completely the heinous crime like murder committed under the nose of the society. The Investigating Officer,,

could have been examined to throw light on the circumstances of the case and could have proved the case beyond reasonable doubt despite eye,,

witnesses turned hostile. Necessary it is to mention that the Investigating Officer draw panchnamas by which iron bar seized from the house of the,,

accused, contained bloodstains, and according to Forensic Science Laboratory, those bloodstains contained the blood group of the deceased.",,

This is not the end but shirt and pant worn by the accused when he was arrested and seized by the Investigating Officer through a panchnama,",,

contained bloodstains, which according to Forensic Science Laboratory report, contained the blood group of the deceased. Learned Trial Judge",,

and prosecuting agency, however, did not bring this evidence on record and adopted ""shutters down"" approach. It is nowhere so defined in any",,

criminal law of the country that evidence means the evidence of eye witnesses only. Evidence may be in any shape, and in search for the truth, this",,

evidence must be appreciated by the courts of law as evidence in criminal trial to come to the truth. In this case, the learned Trial Judge as well as",,

learned APP both shut their eyes to their duties to explore the truth. The worst thing which we find is that the Forensic Science Laboratory report,,

which is produced by the prosecution requires to be exhibited without formal proof under Sections 293 or 294 of the Criminal Procedure Code, is",,

neither exhibited by the Trial Court nor any endeavour was made by the learned APP. Besides, we find from the record that accused himself",,

through his Advocate preferred an Application at Exhibit-7 on 30th of October, 2004, wherein the accused prayed before the Court that in the",,

said case, accused also got injuries and the papers relating to the injuries of the accused be called for and be placed on record as the documents",,

were important for the defence of the accused. The learned Trial Judge passed an order dated 30th of October, 2004 that the application was",,

kept for hearing. However, it appears that, no further orders came to be passed below such application. Perhaps, a judicial adjudication after due",,

consideration, could have assisted the Trial Court to arrive at the truth of the matter, which is the sole purpose of the criminal trial.",,

8. True that criminal justice deals with complex human problems and diverse human beings. On account of relations, witnesses may turn hostile and",,

witnesses may resile when search for the truth is vigorously undertaken through instrumentality of criminal law. In trials, therefore, it becomes the",,

duty of the Judge presiding over a criminal trial, to appreciate the evidence from all corners, and if the evidence is not produced, though available,",,

then, the same could be produced. The courts exist for doing justice to the persons who are affected. As afore-stated, the crimes of such nature",,

like murder are affecting the society. The court is not merely to act as a tape recorder recording the evidence, overlooking the object of trial i.e. to",,

get at the truth. The courts cannot be oblivious to the active role to be played, for which there is not only ample scope but sufficient powers are",,

conferred under the Code. The court has a greater duty and responsibility to render justice in a case where it appears that the role of the,,

prosecuting agency itself is dubious. The courts are expected to perform its duties and functions effectively and true to the spirit with which the,,

courts are sacredly entrusted the dignity and authority and an alert judge actively participating in court proceedings with a firm grip on oars enables,,

the trial smoothly to reach at the truth. The interest of the parties in conducting the trial in such a way so as to gain success is understandable, but",,

the obligation of the Presiding Judge to hold the proceedings as to achieve the dual objectives i.e. search for truth and delivering pure justice cannot,,

be subdued. Wherever necessary, even courts are empowered to curb perjury. This is a fact that most of the witnesses coming in the courts",,

despite taking oath, make false statements to suit the interest of the parties. Effective and stern action is required to be taken on such a stand,",,

which may be taken upon the witnesses. The mere existence of penal provisions to deal with perjury would be a cruel joke with the society unless,,

the courts stop to take evasive recourse despite proof of the commission of the offence.,,

9. We find to our utter shock that so far as this Appeal is concerned, the role of prosecuting agency also appears stigmatic. Witnesses are the eyes",,

and ears of the justice. If the witnesses are incapacitated from acting as eyes and ears, the trial gets putrefied and paralysed and cannot be termed",,

as a fair trial. The incapacitation may be due to various factors. In this case, it may be the relations of the parties because at one hand, the accused",,

was the cousin of the witnesses and the deceased was the father of the complainant and witnesses. It is the cardinal principle in law of evidence,,

that the best available evidence should be brought before the court. Unfortunately, this is a case wherein other evidence besides eye witnesses was",,

available to support the prosecution case was not brought on record by the prosecuting agency nor any attempt was made to show to the court,,

that how the witnesses have failed to support the prosecution case. Evidence of recovery of weapon through panchnama, may not be a discovery,",,

still is a good evidence if proved beyond doubt. Finding bloodstains of group of the deceased on the clothes of the accused as well is a good,,

evidence to support the prosecution besides the direct evidence of eye witnesses. When accused himself files an application that in same case the,,

accused has got injuries and the prosecution as well as court becomes, perhaps, oblivious to bring on record such relevant facts, supporting the",,

search of truth, itself is an example of lack of awareness towards pious duties. Undoubtedly, therefore, the role attributed to learned APP in this",,

trial has been eschewed in hurry of disposal of the trial, which has resulted in failure of justice.",,

10. It is known and cardinal principle of evidence that even if a major portion of evidence is found to be deficient in case residue is sufficient to,,

prove guilt of an accused, the conviction can be maintained. It is the duty of the court to separate grain from chaff in coming to the conclusion of",,

truth. It also becomes the duty of the court to take into consideration of relevant evidence available and courts are empowered to produce on,,

record such evidence if the prosecution failed in their duties to produce such evidence. The conclusion of a criminal trial must be the outcome of,,

cool deliberations and the scanning of the material by the informed mind of the Judge that leads to determination. How can a prosecuting agency or,,

concerned Trial judge afford to be so perfunctory in dealing with the criminal trial of grave crime of murder.,,

14. Recently in the case of HIMANSHU SINGH SABHARWAL vs. STATE OF M.P. & ORS., reported in , 2008 AIR SCW 2206, in para 16",,

and 17, the Hon"ble Supreme Court has observed as under:",,

16. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the",,

witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all,,

necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner,,

that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the",,

proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that,,

the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully,,

ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and,,

acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting",,

agency showing indifference or adopting an attitude of total aloofness.,,

17. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The,,

section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which,,

compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the,,

Court is very wide, the very width requires a corresponding caution. In Mohan Lal v. Union of India (, 1991 Supp (1) SCC 271) this Court has",,

observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, "any Court" "at any stage", or "any",,

enquiry or trial or other proceedings" "any person" and "any such person" clearly spells out that the Section has expressed in the widest possible,,

terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the",,

discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the,,

provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if,,

the fresh evidence to be obtained is essential to the just decision of the case - ''essential'', to an active and alert mind and not to one which is bent'',,

to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the,,

defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the,,

evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but'',,

only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the,,

truth.''''',,

It is further observed by the Hon''ble Supreme Court in the said decision that if the Criminal Court is to be an effective instrument in dispensing,,

justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence,'',,

active interest and elicit all relevant materials necessary for reaching the correct conclusions, to find out the truth, and administer justice with'',,

fairness and impartiality both to the parties and to the community it serves.''''',,

7.4 Thus, in the present case we find that prime and pious duty of the trial Court to appreciate the evidence for the search of the truth is abundant.'',,

However, in hurry of disposal of the case or by perfunctory and disregarding attitude the evidence, which is on record, of the Doctor and the'',,

Investigating Officer, who can be said to be the independent witnesses are not at all appreciated and/or considered. From the impugned judgment'',,

and order it appears that the learned Presiding Judge was also in haste and hurry in disposal of the trial. It is stated that justice hurried is justice,,

buried. The present case is a glaring example of undue haste by the learned Presiding Judge in disposing of the trial and acquitting the accused for,,

the serious offences punishable under sections 498-A read with section 114 of the IPC and sections 306, 304-B read with section 114 of the IPC.",,

As observed hereinabove, from the charge-sheet it appears that there were in all 18 witnesses stated as witnesses in the charge-sheet along with",,

P.W.-1, P.W.-2 and P.W.-3. P.W.-1 and P.W.-2 examined by prosecution are the parents of the deceased and P.W.-3 is the uncle of the",,

deceased. P.W.-1, father of the deceased himself gave the complaint immediately after the occurrence of the incident and death of the deceased.",,

All the three witnesses examined by the prosecution i.e. P.W.-1 (father), P.W.-2 (mother) and P.W.-3 (uncle) turned hostile. Even P.W.-1 in his",,

deposition has denied giving such complaint by him. From the record and rojkam it appears that P.W.-1, P.W.-2 and P.W.-3, all of them who",,

turned hostile were examined on a single day i.e. on 04.06.2007. The deposition of P.W.-4 came to be recorded on 15.06.2007 and the,,

deposition of P.W.-5 was recorded on 11.07.2007. That immediately thereafter and despite the fact that P.W.-1, P.W.-2 and P.W.-3 turned",,

hostile, the learned Public Prosecutor did not examine any other witnesses who were cited as witnesses in the charge-sheet and submitted the",,

purshis dropping other witnesses, which came to be mechanically granted by the learned Presiding Judge. That further statement of all the accused",,

came to be recorded on 24.07.2007 and within a period of 7 days i.e. on 31.07.2007 the learned trial Court has acquitted the accused for the,,

very serious offences. Thus, from the aforesaid it appears that the learned trial Court has disposed of the trial within a period of approximately 2",,

months from the date of framing of the charge. Thus, it appears that the learned Presiding Judge was in haste and hurry in disposal of the trial which",,

has resulted into miscarriage of justice. That the learned Presiding Judge has failed to perform his duty to reach to the real truth.,,

7.5 That takes us to the merits of the case and re-appreciation of the entire evidence on record.,,

At the outset it is required to be noted that in the present case the deceased Jalpaben who committed the suicide by hanging on fan was aged only,,

21 years and she committed the suicide at about 9.00 - 9.30 a.m. in the house of accused. It is also required to be noted and it is not in dispute,,

that the marriage span was only 1 & 1/2 years. The death of the deceased Jalpa was initially registered as Accidental Death for Accidental Death,,

Case No. 40/2006 and the investigation of the said Accidental Death Case No. 40/2006 was being conducted by P.W.-5 - PI, Odhav Police",,

Station and during the course of the said investigation, P.W.-1 - father of the deceased gave the complaint which was recorded by the Investigating",,

Officer - PI, Odhav Police Station - Rasikbhai Nandasan, which was subsequently sent to the PSO who recorded the same as FIR which has",,

been exhibited vide Exh. 10. In the said FIR there are specific allegations against all the accused with respect to harassment, ill-treatment to the",,

deceased for non-fulfillment of the demand of dowry. Though P.W.-1 - original complainant has subsequently turned hostile, however he admits",,

his signatures on the said complaint which has been exhibited at Exh. 10. It is also required to be noted at this stage that he does not specifically,,

deny that he has not given any complaint and/or he has not stated in his deposition that whatever he stated in his complaint Exh. 10 was not stated,,

by him and/or whatever he has stated before the Investigating Officer, the same has not been properly stated in the complaint. Even otherwise the",,

FIR at Exh. 10 has been proved by the prosecution by examining the IO - PI, Odhav Police Station (P.W.-5) at Exh. 29 and in the cross-",,

examination by the defence, he has specifically stated that it is not true that he has not written the complaint as per the say of the complainant",,

and/or that he himself has on his own written the complaint. At this stage it is required to be noted that the IO in the present case is an officer of,,

independent agency and nothing has been alleged against him that there was any enmity between the Investigating Officer and the accused. Under,,

the circumstances, there is no reason to doubt the credibility and trustworthiness of the said witness. From the deposition of the Investigating",,

Officer it appears that it is recorded soon after the incident and the death of the deceased Jalpa and after recording the complaint given by the,,

P.W.-1, father of the deceased, he recorded the statement of other relatives including P.W.-1, P.W.-2 and P.W.-3 in which all of them",,

categorically stated that all the accused were demanding the amount/dowry and for non-fulfillment of the demand of dowry, she was subjected to",,

harassment and ill-treatment. However, unfortunately and may be because of the settlement as admitted by P.W.-1 in his cross-examination,",,

P.W.-1, P.W.-2 and P.W.-3 have turned hostile and did not support the case of the prosecution. However, from the deposition of the doctor and",,

the IO and the panchnama of the place of incident etc. the prosecution has been successful in proving that the deceased died because of the,,

strangulation and she committed the suicide by hanging on fan.,,

7.6 At this stage even the conduct of the accused more particularly the husband and father-in-law deserves consideration. Even from the,,

deposition of P.W.-1, P.W.-2 and P.W.-3, at about 11 a.m. i.e. after the deceased died by strangulation, when the husband informed the in-laws",,

with respect to death of the deceased, he stated that the deceased died because of the electric shock. However, admittedly, the deceased had",,

died because of strangulation and even the same is also proved by the medical evidence and even the deposition of the doctor. Therefore, a wrong",,

information was given by the accused more particularly the husband of the deceased to the in-laws.,,

7.7 One another glaring fact which is missed by the learned Presiding Judge is the injuries found on the face of the deceased such as abrasions etc.,,

which, as per the deposition of doctor, were ante mortem. The doctor has categorically stated in his deposition that the said injuries/abrasions were",,

ante mortem and were fresh and just prior to the time she committed the suicide. Thus, it appears that in the morning she was subjected to ill-",,

treatment and harassment and thereafter she committed the suicide by hanging on fan. Thus, if the learned Presiding Judge instead of disposal of the",,

trial in hurry and haste would have appreciated other evidences on record, in its true perspective, in that case the result would have been different.",,

Thus, it appears that the finding recorded by the learned trial Court while acquitting the original accused that the prosecution has failed to prove the",,

case against the accused are ignoring the material evidence on record which has resulted into miscarriage of justice and therefore, interference of",,

this Court is called for.,,

7.8 It cannot be disputed that the offences under sections 498-A, 306, 304-B of the IPC are all offences not only against the individual but against",,

the society and are treated and considered to be heinous crimes and a great care and caution was required to be taken by the prosecuting agency,,

as well as the learned Presiding Judge. Despite the above, the trial has been disposed of resulting into acquittal of the accused in a perfunctory",,

manner and ignoring other material evidences on record, which are discussed hereinabove. Considering the aforesaid facts and circumstances and",,

the evidence on record, all the accused are held guilty for the offences punishable under section 498-A read with section 114 of the IPC, sections",,

306 and 304-B read with section 114 of the IPC, more particularly considering the deposition of the Investigating Officer, statements of the",,

witnesses recorded by him so stated by him in his deposition, deposition of doctor, medical evidence etc. and the conduct of the accused.",,

Consequently, their acquittal deserves to be quashed and set aside and accordingly quashed and set aside.",,

8. On setting aside the acquittal and convicting the original accused for the aforesaid offences, we have heard all the accused and the learned",,

advocate appearing on behalf of the original accused on sentence. Shri Dipen Dave, learned advocate appearing for Shri Zala, learned advocate",,

appearing on behalf of the original accused has stated that by now 9 years have passed from the date of incident and that even the original accused,,

No. 5 - Bhavnaben Bhagvanbhai Prajapati has married and at present is pregnant having pregnancy of 5 months and therefore, it is requested to",,

take lenient view.,,

The aforesaid is opposed by Shri Raval, learned Additional Public Prosecutor by submitting that the offences committed by the accused are",,

heinous crime against the society and it was ill-treatment and harassment by the accused for non-fulfillment of demand of dowry, a young girl aged",,

21 years and even the marriage span of 1 & 1/2 years only has been forced to commit the suicide. It is submitted that even the conduct on the part,,

of the accused entering into settlement despite having committed heinous crime also deserves consideration. Therefore, it is requested not to take",,

any lenient view and has requested to impose maximum punishment provided under the IPC.,,

8.1 Having heard accused and the learned advocate appearing on behalf of the accused on sentence and after giving sincere thought, we are of the",,

opinion that 7 years Rigorous Imprisonment for the offences punishable under Sections 304-B, 306 read with Section 114 of the IPC with fine of",,

Rs. 1000/- and in default to undergo further 6 months" Rigorous Imprisonment can be said to be adequate punishment and no leniency can be,,

shown to the accused who have committed heinous crime against woman.,,

9. In view of the above and for the reasons stated herein above, present Criminal Appeal is hereby allowed. Impugned judgment and order of",,

acquittal passed by the learned Additional City Sessions Judge (Fast Track Court No. 2), Ahmedabad in Sessions Case No. 16/2007 is hereby",,

quashed and set aside. All the accused are held guilty for the offence punishable under section 498-A read with section 114 of the IPC and for the,,

offences punishable under sections 304-B, 306 read with Section 114 of the IPC and all the accused are sentenced to undergo 7 years Rigorous",,

Imprisonment for the offences punishable under Sections 304-B, 306 read with Section 114 of the IPC with fine of Rs. 1000/- and in default of",,

payment of fine to undergo further 6 months" Rigorous Imprisonment. All the accused are sentenced to undergo 1 year Rigorous Imprisonment for,,

the offence punishable under Section 498-A of the IPC with fine of Rs. 1000/- and in default of payment of fine to undergo 1 month Rigorous,,

Imprisonment. All the accused are also sentenced to undergo 3 years" Rigorous Imprisonment for the offence punishable under Section 3 of the,,

Dowry Prohibition Act with fine of Rs. 15,000/- each and in default of payment of fine to undergo further 3 months" Simple Imprisonment. All the",,

sentences to run concurrently. All the accused, except original accused No. 5, be taken into custody to undergo the sentences as observed",,

hereinabove. Original accused No. 5 is hereby granted time to surrender up to 31.12.2016. Till then, she is ordered to be released on bail on her",,

furnishing the personal bond of Rs. 10,000/- to the satisfaction of the concerned trial Court. It is also observed and directed that on completion of",,

the aforesaid period when original accused No. 5 surrenders she may be permitted to carry both her kids and the jail authority is directed to,,

provide full facilities to her and the kids.,,