REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 443 OF 2020

NAGABHUSHAN …APPELLANT

VERSUS

THE STATE OF KARNATAKA …RESPONDENT

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction dated 11.10.2019 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No. 525/2013, by which the High Court has allowed the said appeal preferred by the respondent – State of Karnataka and has reversed the judgment and order of acquittal passed by the learned trial Court insofar as the appellant – original accused no.1 is concerned for the offences punishable under Sections 498A and 302 read with 34 of the IPC and consequently convicted the

appellant herein – original accused no.1 for the aforesaid offences, original accused no.1 has preferred the present appeal. However, the High Court has confirmed the judgment and order of acquittal insofar as original accused nos. 2 and 3 are concerned.

2. As per the case of the prosecution, original accused no.1 married the deceased, the daughter of PW3 & PW4 nine years ago, prior to the date of the incident. That the deceased was subjected to the mental cruelty and there was demand of dowry from the parents of the deceased Rekha. In that regard, mediation was also held and thereafter PW3 & PW4 gave Rs. 10,000/- and Rs. 20,000/- on two occasions. On 24.06.2010 at about 9 p.m. in the matrimonial home, appellant herein – original accused no.1 took up quarrel with his wife Rekha (deceased) and at that time, he took kerosene and poured the same on her and lit the fire. The deceased was taken to the hospital. That based on the information, the investigating officer went to the hospital and recorded her statement on 27.06.2010 (Exhibit P5). It is alleged that even earlier also on 25.06.2010, the statement of the deceased was recorded by the police (Exhibit D2). On conclusion of the investigation, the investigating officer filed the chargesheet against all the accused for the offences punishable under Sections 498A and 302 read with 34 of the IPC. The case was committed to the Court of Sessions. The accused pleaded not

guilty and therefore all of them came to be tried by the learned Sessions Court for the aforesaid offences.

2.1 To prove the case against the accused, the prosecution examined in all 14 witnesses and brought on record the documentary evidences including Exhibit P5 – dying declaration and the medical evidence. That after closure of the evidence on the side of the prosecution, further statements of the accused under Section 313 Cr. P.C. were recorded. Appellant herein – original accused no.1 examined himself as DW1 and also examined a witness as DW2. The accused relied upon the earlier statement of the deceased (Exhibit D2). That on appreciation of the evidence and not believing the dying declaration – Exhibit P5 and having found contradictions in two dying declarations Exhibit P5 and Exhibit D2, the learned trial Court acquitted all the accused for the offences for which they were tried.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the learned trial Court, the State of Karnataka preferred appeal before the High Court. By the impugned judgment and order, the High Court has reversed the order of judgment and order of acquittal insofar as the appellant herein – original accused no.1 is concerned and has convicted the appellant herein – original accused no.1 for the offences punishable under Sections 498A and 302

read with 34 of the IPC. The judgment and order of acquittal for original accused nos. 2 & 3 has been confirmed by the High Court.

3.1 Feeling aggrieved and dissatisfied with the impugned judgment and order of the High Court reversing the judgment and order of acquittal and convicting the appellant herein – original accused no.1 for the offences punishable under Sections 498A & 302 read with 34 of the IPC, original accused no.1 has preferred the present appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in reversing the well-reasoned judgment and order of acquittal passed by the learned trial Court.

4.1 It is submitted that while reversing the order of acquittal passed by the learned trial Court, the High Court has exceeded in its jurisdiction vested in it under Section 378 of the Cr. P.C.

4.2 It is submitted that as there were material contradictions in two dying declarations and Exhibit D2 was the dying declaration first in time which came to be believed by the learned trial Court, the learned trial Court committed no error in acquitting the accused.

4.3 It is submitted that the learned trial Court on appreciation of evidence, more particularly two dying declarations, disbelieved the subsequent dying declaration (Exhibit P5) and thereby acquitted the accused, the same was not required to be interfered with by the High Court in exercise of the appellate jurisdiction against the judgment and order of acquittal.

4.3 It is further submitted that while believing the dying declaration vide Exhibit P5, the High Court has not appreciated that the same was recorded by PW10 in the presence of PW13, PW8 and parents of the deceased.

4.4 It is submitted that the High Court ought to have appreciated that the earlier dying declaration vide Exhibit D2, which was recorded on 25.06.2010, was recorded immediately on the next day of the incident wherein deceased Rekha has specifically stated that it was an accidental fire due to which she sustained burn injuries. It is submitted that even in the history which was recorded in the hospital, when the deceased Rekha was admitted, it was stated that the deceased had suffered accidental burn injuries.

4.5 It is submitted that the High Court has not properly appreciated the fact that the dying declaration (Exhibit P5) was recorded later on and that too after the parents of the deceased reached to the hospital.

4.6 It is submitted that possibility of tutoring the deceased Rekha so as to make statement against the accused persons cannot be ruled out. It is submitted that therefore at least the appellant is entitled to the benefit of doubt.

4.6 It is submitted that the High Court has not at all appreciated and/or considered the defence version that on the date of incident there was no power supply in the house and therefore the deceased went to the kitchen to prepare the food and found that the gas was empty and thereafter she told the appellant that she would use the kerosene stove to prepare the food, and that while she was preparing the food with the help of candle light and when the same was almost exhausted, she tried to lit another candle but the same had fallen on the ground where the kerosene was already spread while pouring the kerosene to the stove and as a result of which the fire was caught on her clothes.

4.7 It is submitted that even thereafter when the deceased screamed, the appellant – original accused no.1 rushed to the spot and tried to extinguish the fire and while extinguishing the fire, he also sustained burn injuries in his right hand. It is submitted that the aforesaid circumstances which were considered by the learned trial Court while acquitting the accused have not been considered and/or appreciated by

the High Court while reversing the order of acquittal passed by the learned trial Court and convicting the accused – appellant herein.

4.8 It is submitted that as such when it was an appeal against the judgment and order of acquittal, the High Court was not justified in reappreciating the oral as well as documentary evidence. It is submitted that only in a case where the findings recorded by the learned trial Court are found to be perverse, the interference by the appellate court against the order of acquittal is warranted. It is submitted that in the present case, as such, the view taken by the learned trial Court was a plausible view, which was on appreciation of the evidences on record and therefore the High Court has committed a grave error in reversing the judgment and order of acquittal passed by the learned trial Court and convicting the accused -appellant herein.

5. We have heard the learned counsel appearing on behalf of the appellant at length.

5.1 Being the statutory appeal against the judgment and order of the High Court reversing the acquittal and thereby convicting the appellant herein – original accused no.1, we have reappreciated the entire evidence on record.

5.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the

interference by the High Court in an appeal against acquittal is required to be considered.

5.2.1 In the case of *Babu v. State of Kerala, (2010) 9 SCC 189,* this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

> **12.** This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram* v. *State of U.P (1975) 3 SCC 219*, *Shambhoo Missir* v. *State of Bihar (1990) 4 SCC 17, Shailendra Pratap* v. *State of U.P (2003) 1 SCC 761*, *Narendra Singh* v. *State of M.P (2004) 10 SCC 699*, *Budh Singh* v. *State of U.P (2006) 9 SCC 731*, *State of U.P.* v. *Ram Veer Singh (2007) 13 SCC 102*, *S. Rama Krishna* v. *S. Rami Reddy (2008) 5 SCC 535*, *Arulvelu* v. *State (2009) 10 SCC 206*, *Perla Somasekhara Reddy* v. *State of A.P (2009) 16 SCC 98* and *Ram Singh* v. *State of H.P (2010) 2 SCC 445*)
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> **13.** In *Sheo Swarup* v. *King Emperor AIR 1934 PC 227,* the Privy Council observed as under: (IA p. 404)
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> "… 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."
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> **14.** The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu* v. *State AIR 1954 SC 1*, *Balbir Singh* v. *State of Punjab AIR 1957 SC 216*, *M.G. Agarwal* v. *State of Maharashtra AIR 1963 SC 200*, *Khedu Mohton* v. *State of Bihar (1970) 2 SCC 450*, *Sambasivan* v. *State of Kerala (1998) 5 SCC 412*, *Bhagwan Singh* v. *State of*

M.P(2002) 4 SCC 85 and *State of Goa* v. *Sanjay Thakran (2007) 3 SCC 755*)

15. In *Chandrappa* v. *State of Karnataka (2007) 4 SCC 415,* this Court reiterated the legal position as under: (SCC p. 432, para 42)

"(*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 emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

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

16. In *Ghurey Lal* v. *State of U.P (2008) 10 SCC 450,* this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan* v. *Naresh (2009) 9 SCC 368,* the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

"*20*. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P.* v. *Banne (2009) 4 SCC 271,* this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)

"(*i*) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(*ii*) The High Court's conclusions are contrary to evidence and documents on record;

(*iii*) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(*iv*) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(*v*) This Court must always give proper weight and consideration to the findings of the High Court;

(*vi*) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in *Dhanapal* v. *State (2009) 10 SCC 401*.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(emphasis supplied)

5.2.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra* v. *Delhi Admn (1984) 4 SCC 635*, *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons 1992 Supp (2) SCC 312*, *Triveni Rubber & Plastics* v. *CCE 1994 Supp. (3) SCC 665*, *Gaya Din* v. *Hanuman Prasad (2001) 1 SCC 501*, *Aruvelu v. State (2009) 10 SCC 206* and *Gamini Bala Koteswara Rao* v. *State of A.P (2009) 10 SCC 636*)."

(emphasis supplied)

5.2.3 It is further observed, after following the decision of this Court in the case of *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10*, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

5.3 In the case of *Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436,* this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

> **"31.** An identical question came to be considered before this Court in *Umedbhai Jadavbhai (1978) 1 SCC 228*. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)
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> > "*10*. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In *Sambasivan v. State of Kerala (1998) 5 SCC 412*, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

> "*8*. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal *Doshi v. State of Gujarat (1996) 9 SCC 225* viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309*, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material

evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P. AIR 1955 SC 807*, in para 5, this Court observed and held as under: (AIR pp. 809-10)

"*5*. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh* v. *State AIR 1952 SC 52*; *Wilayat Khan* v. *State of U.P AIR 1953 SC 122*) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In *K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355*, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

(emphasis supplied)

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the findings recorded by the High Court, the High Court has specifically observed and held that the finding recorded by the learned trial Court discarding and/or not believing the dying declaration (Exhibit P5) is perverse and contrary to the evidence on record. The High Court has given cogent reasons while believing dying declaration (Exhibit P5) and has also considered in detail what is stated in the later dying declaration (Exhibit P5), vis-à-vis, the medical evidence and the injuries sustained by the deceased. Therefore, as such, the High Court has not committed any error in reappreciating the entire evidence on record and thereafter interfering with the judgment and order of acquittal passed by the learned trial Court, having found the finding recorded by the learned trial Court perverse.

7. Now so far as the merits of the appeal are concerned, it cannot be disputed that in the present case there are two dying declarations, (i) Exhibit P5 and (ii) Exhibit D2. The High Court in the impugned judgment and order has given cogent reasons to rely upon and believe the second dying declaration – Exhibit P5. The High Court has also taken note of the fact that the second dying declaration is reliable and the version in the second dying declaration is supported by the circumstances, namely, the injuries sustained by the deceased; no stove was found at the place of occurrence. The High Court has also taken note of the fact that in the

second dying declaration, the deceased has explained her first statement that it was a case of accident and she categorically stated in the second dying declaration that at the time when she gave first statement that it was a case of accident, she was given threats by the appellant herein – original accused no.1 that he will kill her children also. She also stated in the second dying declaration that after her parents came, she got the courage to tell the truth. Therefore, as such, the High Court rightly believed the second dying declaration – Exhibit P5.

8. At this stage, the decisions of this Court in the cases of *Nallam Veera Stayanandam v. Public Prosecutor (2004) 10 SCC 769; Kashmira Devi v. State of Uttarakhand (2020) 11 SCC 343; and Ashabai v. State of Maharashtra (2013) 2 SCC 224 are required to be referred to.* In the aforesaid decisions, this Court had an occasion to consider the cases where there are multiple dying declarations. In the aforesaid decisions, it is held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is also held that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, and on evaluation of both dying declarations independently, dying declaration recorded as Exhibit P5 reflects the true state of affairs and the contents are supported by the medical evidence and the injuries sustained by the deceased. The plea put forth by the defence that it was a case of an accident and while pouring the kerosene from kerosene can to the bottle, the same had fallen on the clothes placed on the ground and when the deceased tried to remove the clothes from that place, the candle fell on the ground, as a result, her clothes caught fire and she sustained burn injuries is disbelieved by the High Court considering the circumstances noted by the High Court that the deceased sustained injuries on the face, chest and back and to the upper limbs. The main injuries are found on the upper limbs of the body. Therefore, as rightly observed by the High Court, the aforesaid injuries can be possible when the kerosene is poured on the deceased. According to the defence and as per the evidence of DW1-A1, while putting the kerosene into the stove, accidentally the kerosene had fallen on the ground and also on her clothes, and thereafter when the candle fell on the ground, the same had come in contact with her clothes and kerosene. If that is the case, there would have been injuries to her feet also. However, no burn injuries are found on her feet. No stove was found at the place of occurrence.

Therefore, the defence came out with a false case of accidental fire, which, as such, is not supported by any other reliable evidence. On the contrary, this evidence speaks otherwise. Therefore, when A1 came with a false defence and the dying declaration – Exhibit P5 is corroborated by other surrounding circumstances and evidence and after independent evaluation of Exhibit P5 and Exhibit D2, when the High Court has found that Exhibit P5 is reliable and inspiring confidence and thereafter when the High Court has convicted the accused, it cannot be said that the High Court has committed any error.

10. Now so far as the submission on behalf of the accused that even thereafter he tried to extinguish the fire and he also sustained injuries and therefore it cannot be said that the appellant has committed an offence punishable under Section 302 IPC is concerned, at the outset, it is required to be noted that in the present case the prosecution is successful in proving that the accused – appellant herein poured kerosene on the deceased. As per dying declaration Exhibit P5, it has been proved that the deceased was set ablaze by pouring kerosene on her. The act of the accused falls in clause fourthly of Section 300 IPC. It emerges from the evidence on record that the accused poured kerosene on the deceased and not only poured kerosene but also set her ablaze by the matchstick. Merely because thereafter the A1 might have tried to

extinguish the fire, that will not bring the case out of clause fourthly of Section 300 IPC.

A somewhat similar submission was made before this Court in the case of *Santosh v. State of Maharashtra (2015) 7 SCC 641*. In the case before this Court, it was contended on behalf of the accused who poured kerosene on the deceased and set her ablaze by matchstick that thereafter they tried to save the deceased by pouring water on her and therefore it was contended on behalf of the accused that by that conduct it cannot be said that the intention of the accused was to cause death of the deceased. The aforesaid has been negated by this Court by observing in paragraphs 9 to 18 as under:

> **"9.** Insofar as the first contention that the appellant is not responsible for the death of deceased Saraswatibai, the defence made an attempt to contend that the fire was accidental and that the appellant tried to extinguish the fire in order to save her and in that process, he also suffered burn injuries. The prosecution has adduced cogent evidence to prove that the appellant has caused the death of deceased Saraswatibai. The accused suspected the deceased of infidelity and picking up a fight over it, he kicked her and inflicted fist-blows and further set her on fire by pouring kerosene over her person. PW 6, doctor certified that the deceased was in a fit mental condition to make the statement and PW 7, the Executive Magistrate recorded the dying declaration Ext. 1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the appellant poured kerosene over her person and set her on fire. That accused poured kerosene on the deceased and set her on fire is corroborated by the oral testimony of PW 3, Sindhu Sunil Ingole (sister-in-law) of the deceased. PW 1 Raju Janrao Gavai, neighbour of the deceased who accompanied the deceased to the hospital to whom the deceased is said to have made a statement about the overt act of the accused, had only stated that the deceased told him that the accused beat her and also kicked her. PW 1 had not supported the statement of the deceased in the dying declaration that the accused poured kerosene on her and set her on fire. However, the prosecution has established the guilt of the accused by Ext. 1 dying declaration and the oral evidence of the

mother (PW 2) and the sister-in-law (PW 3) and the same cannot be doubted.

10. The learned counsel for the appellant contended that there was no premeditation and the appellant had poured kerosene from the lamp nearby and thereafter the appellant attempted to extinguish the fire by pouring water on her and himself getting burn injuries in the process. It was submitted that the conduct of the appellant in trying to extinguish the fire immediately after the incident would clearly show that there was no intention on the part of the appellant to commit the murder. In support of his contention, he placed reliance on the judgment of this Court in *Kalu Ram* v. *State of Rajasthan* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] .

11. The question falling for consideration is whether the act of the accused pouring water would mitigate the offence of murder. Where the intention to kill is present, the act amounts to murder, where such an intention is absent, the act amounts to culpable homicide not amounting to murder. To determine whether the offender had the intention or not, each case must be decided on its facts and circumstances. From the facts and circumstances of the instant case, it is evident that : (*i*) there was a homicide, namely, the death of Saraswatibai; (*ii*) the deceased was set ablaze by the appellant and this act was not accidental or unintentional; and (*iii*) the post-mortem certificate revealed that the deceased died due to shock and septicaemia caused by 60% burn injuries. When the accused poured kerosene on the deceased from the kerosene lamp and also threw the lighted matchstick on the deceased to set her on fire, he must have intended to cause the death of the deceased. As seen from the evidence of PW 5, panch witness, in the house of the appellant, kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene was poured from the kerosene lamp or from the can is of no consequence. When there is clear evidence as to the act of the accused to set the deceased on fire, absence of premeditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

12. After attending to nature's call, the deceased returned to the house a little late. The accused questioned her as to why she was coming late and he also suspected her fidelity. There was no provocation for the accused to pour kerosene and set her on fire. The act of pouring kerosene, though on the spur of the moment, the same was followed by lighting a matchstick and throwing it on the deceased and thereby setting her ablaze. Both the acts are intimately connected with each other and resulted in causing the death of the deceased and the act of the accused is punishable for murder.

13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death.

14. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] , it was contended that such conduct of the accused would bring down the offence from murder to culpable homicide not amounting to murder. In *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] , the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do as demanded. Infuriated by the fact that his wife had failed to concede to his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realised that the fire was flaring up, he threw water on her person in a desperate bid to save her. In such facts and circumstances, this Court held that the accused would not have intended to inflict the injuries which she sustained on account of the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

15. The decision in *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated on a par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred.

16. Within three months of her marriage, the deceased died of burn injuries. In bride burning cases, whenever the guilt of the accused is

brought home beyond reasonable doubt, it is the duty of the court to deal with it sternly and award the maximum penalty prescribed by the law in order that it may operate as a deterrence to other persons from committing such offence.

17. This Court on various occasions has stressed the need for vigilance in cases where a woman dies of burn injuries within a short span of her marriage and that stern view needs to be adopted in all such cases. In *Satya Narayan Tiwari* v. *State of U.P.* [(2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393] , this Court in paras 3 and 9 has held as under : (SCC pp. 692 & 693)

> "*3.* Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner? What has our society become—this is illustrated by this case.
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> *9.* Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialisation of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand."

18. Upon analysis of the evidence adduced by the prosecution, the courts below recorded concurrent findings that the accused caused the death of deceased Saraswatibai and convicted the appellant. It is well settled that concurrent findings of fact cannot be interfered with unless the findings are perverse and unsupportable from the evidence on record. This view has

been reiterated in *Dhananjay Shanker Shetty* v. *State of Maharashtra* [(2002) 6 SCC 596 : 2002 SCC (Cri) 1444] . In the totality of the facts and circumstances, in our view, the concurrent findings of facts recorded by the courts below are based on evidence and we see no infirmity in the impugned judgment warranting interference".

Therefore, after pouring kerosene on the deceased and thereafter setting her ablaze, thereafter merely because the accused might have tried to extinguish the fire will not take the case out of the clutches of clause fourthly of Section 300 of the IPC. The act of the accused pouring kerosene on the deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court has rightly convicted the accused for the offence under Section 302 IPC.

11. In view of the above and for the reasons stated above, the present appeal fails. We see no reason to interfere with the impugned judgment and order of conviction passed by the High Court. The appeal deserves to be dismissed and is accordingly dismissed.

……..J.
[Dr. Dhananjaya Y. Chandrachud]

New Delhi;
March 8, 2021.

……..J.
[M.R. Shah]