

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 20079 of 2021

In R/CRIMINAL APPEAL NO. 1673 of 2021

**With
R/CRIMINAL APPEAL NO. 1673 of 2021**

STATE OF GUJARAT

Versus

GAUTAMBHAI DEVKUBHAI VALA

Appearance:

PUBLIC PROSECUTOR(2) for the Applicant(s) No. 1
for the Respondent(s) No. 1,2,3,4

**CORAM: HONOURABLE MR. JUSTICE S.H.VORA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 18/01/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)

1. Feeling aggrieved and dissatisfied with the judgment and order dated 08.02.2021 passed by the learned Special Judge (Atrocity) at Dhari in Special Case (Atrocity) No. 03 of 2018 whereby the present opponent Nos. 1, 2 and 3, who are original accused, are acquitted. From the offence punishable under Section 306, 323, 504 and 506(2) of the Indian Penal Code (hereinafter referred to as '**IPC**' for short) as well as Section 3(1)(R), 3(1)(S) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short) by giving benefit of doubt to the accused

persons, the applicant-State of Gujarat has preferred this application to grant leave to appeal as provided under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (**'the Code'** for short).

2. The facts involved in the present appeal are reproduced in nutshell as under:

2.1. The case of the prosecution, is that on 23.12.2017 at about 11:00 o'clock, while the complainant was going at the house of Sanjaybhai at village Bagasara, he has received phone call from one Rajubhai Chavda on his mobile, whereby he has informed to reach at Bagasara, S.T. Depot as the Rajubhai Chavda is beaten by 7 to 8 persons in the S.T. Depot. Therefore, son of maternal uncle of the complainant Pankaj came with the complainant on his motor cycle and he had dropped the complainant at Bagasara S.T. Depot where the said Rajubhai was standing and waiting for the complainant. The complainant met Rajubhai and asked about the incident and Rajubhai has informed him that he was beaten by Pratap @ Tiku Vala, Gautam Vala and other five to six persons of village Timbla. The complainant has seen Pratap @ Tiku Vala and Gautam Vala departing from the place alongwith the other accused persons.

2.2. Complainant further stated that Pratapbhai @ Tiku Vala had demanded Rs.500/- from Rajubhai which was not given by him and therefore Pratap @ Tiku Vala and Gautam Vala and other five to six persons gave me kick and fist blows and has also abused the complainant in the filthy language relating to his caste and threatened him to kill the complainant. Thereafter, Rajubhai has gone to his factory of diamond polishing and complainant has gone to his college.

2.3. It is the case of the prosecution that in the evening hours, the complainant had tried to contact Rajubhai but he has not received any reply and ultimately complainant had gone personally at the house of Rajubhai and found that Rajubhai has committed suicide by hanging himself below the fan. Therefore, the complainant has lodged complaint with the Bagasara Police Station which is registered with C.R.I-40/2017 for the alleged offence punishable under Section 306, 323, 504, 506(2) of the Indian Penal Code and Section 3(1)(R), 3(1)(S) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2.4. In pursuance of the complaint lodged by the complainant, the Investigating Agency started investigation and collected evidence in

the form of statement of witnesses and also in the nature of documentary evidence and after that found some material evidence against the respondents-accused persons, the charge-sheet came to be filed before the learned Court.

2.5. Upon the committal of the case, the Sessions Court at Dhari registered the case as Special (Atrocity) Case No. 03 of 2018 and the trial has commenced and the learned Trial Court has framed the charge at Exh. 15 under Section 228(1)(B) of the Code of Criminal Procedure, 1973 and statements of the accused persons were recorded under Section 228(2) of the Code of Criminal Procedure, 1973 at Exh. 16 to Exh. 18. The accused person in the statement pleaded (not guilty) and claimed to proceed with the trial.

3. The prosecution has examined 20 witnesses and also produced documentary evidence which are as under:

Sr. No.	Details	Exhibit
1.	Inquest panchnama	21
2.	Arrest panchnama of accused Nos. 1 and 2	23
3.	Arrest panchnama of accused No. 3	25
4.	Discovery panchnama for clothes from dead body	27
5.	Panchnama of scene of offence	30
6.	M.L.C. Yaadi (Bagasara)	33

7.	Yaadi to perform P.M. (Bagasara)	34
8.	P.M. report (Bagasara)	35
9.	Yaddi made by the Medical Officer, Bagasara to the Head of the Forensic Department of Bhavnagar Medical College.	36
10.	Discovery Panchnama of muddamal motor-cycle	38
11.	P.M. report (Bhavnagar)	42
12.	Form for collection of viscera of dead body	43
13.	The complaint	45
14.	Caste certificate of the complainant	54
15.	Site inspection report by F.S.L. van	56
16.	Depute order	58
17.	Forwarding letter of F.S.L. Junagadh	61
18.	Letter to include F.S.L. Officer as a witness in the charge-sheet	62
19.	Muddamal analysis report and opinion of the F.S.L. Junagadh	63
20.	Certificate of Tibla Gram Panchayat of accused No. 2	64
21.	Certificate of Jamka Gram Panchayat of accused No. 1	65
22.	Certificate of Jamka Gram Panchayat of accused No. 3	66

4. Upon conclusion of the trial, the respondent-accused persons were examined under the provisions of Section 313 of the Code of Criminal Procedure and in their further statement, the respondents-accused persons denied their involvement in the alleged crime and stated that false case is lodged against them. After hearing both the parties and after analysis of the evidence on record, the Sessions Court at Dhari has acquitted the accused persons from the charge of Section 306, 323, 504 and 506(2) of the Indian Penal Code (hereinafter referred to as '**IPC**' for short) as well as Section 3(1)(R), 3(1)(S) and 3(2)(5) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (**'the Act'** for short) by giving benefit of doubt to the accused persons and therefore, the present appeal is preferred by the State of Gujarat, being aggrieved and dissatisfied with the judgment and order passed by learned Sessions Court for acquittal of the accused.

5. The learned APP Ms. Monali Bhatt has submitted that from the deposition recorded of prosecution witness Nos. 10 and 11 by Exh. 44 and 46 respectively, it clearly transpires that Rajubhai has committed suicide due to the harassment caused by Pratap @ Tiku Vala, Gautam Vala and other five to six persons. She has also pointed out that there is deposition of Sagarbhai Shamjibhai Chavda at Exh 44 who is the complainant, and he has stated that Rajubhai has specifically earlier stated about incident of harassment which has taken place. He has also deposed in his deposition that Rajubhai has committed suicide due to torturous action of the accused. Learned APP Ms. Monali Bhatt has also pointed out that from the deposition of Jigar Hareshbhai Khitoliya at Exh. 46 and stated that he, being eye-witness, his depositions cannot be discarded by the learned Trial Court while appreciating the evidence. She has pointed out from the

deposition of the said witness that when he reached the S.T. Depot at Bagasara, he found that there is a big gathering of the public and he has also found that Pratap @ Tiku Vala and Gautam Vala were beating Rajubhai with kick and fist blows and when he tried to rescue Rajubhai, the accused Pratap @ Tikubhai has threatened him in filthy language and also threatened him to go away from this place otherwise they will kill Jigar Hareshbhai Khitoliya. He has also deposed that Rajubhai thereafter informed him that Pratap @ Tiku Vala was asking for Rs.500/- from him and as Rajubhai has not given said money to Pratap @ Tiku Vala, they have beaten Rajubhai and thereafter he found that Rajubhai has committed suicide in the evening at his residence and thereafter as per the submissions made by learned APP Ms. Monali Bhatt that the said witness has also supported the allegation of the complainant about the incident occurred and he can be also considered as a eye-witness. She has also pointed out that from the deposition of the prosecution witness No. 7 Dr. Prakash Kumar Balubhai Savaliya at Exh. 32, the case of the prosecution is also supported as the doctor has performed the post mortem of the deceased Rajubhai and he has referred the body to Sir T Hospital, Bhavnagar in order to find out the real cause of

death. Though, he has admitted that there is no external injury found from the dead body except ligature mark. In substance, the said witness is supporting the possibility of the death caused due to the suicide committed by the deceased, the prosecution has also examined prosecution witness No. 9 Dr. Milindsingh Badriprasadsingh Yadav at Exh. 41 who is a Medical Officer at Sir T Hospital, Bhavnagar. He has also further carried out the post mortem and has found that at the end of post mortem, the cause of death is due to suffocation in the respiratory retract and therefore, learned APP Ms. Monali Bhatt has also stated that prosecution has proved that cause of death is unnatural, not natural and therefore, she has submitted that learned Trial Court has committed error in giving benefit of doubt to the accused persons and therefore she prays to allow the appeal by exercising powers under Section 378 of the Code.

6. Before the evidences are further scrutinized, it is necessary that prosecution is required to prove the case in the criminal proceedings by leading cogent and convincing evidence and the charge levelled against the accused persons should be proved beyond

reasonable doubt.

7. In the present case, neither complainant nor the other witness examined at Exh. 47, Hareshbhai Khitoliya are supporting the case of the prosecution in view of the charge framed against the accused persons. On re-appreciation of the evidence, we have noticed that the complaint of the complainant is not trustworthy and even from the deposition of the complainant, we found no material which clearly implicate the accused persons for the charge levelled against the them. We find that from the deposition given by the witness Hareshbhai Khitoliya at Exh. 46, the said witness has not given his version in the appeals, about Pratap @ Tiku Vala who has given the threat about killing him if he has not left the place of offence. He has also not stated that Rajubhai has told him that Pratap @ Tiku Vala was asking Rs.500/- from him and as Rajubhai has not given that amount, the accused persons have beaten Rajubhai. He has claimed himself as eye-witness of the offence committed by the accused and given his version that the accused have given 10 to 15 kick and fist blows to Rajubhai but when we have perused the deposition of Dr. Prakash Kumar Balubhai Savaliya at Exh. 32 in relation to the above

version of the witness Hareshbhai Khitoliyav are the doctor has stated that there is no external injury or kick and fist blows found from the body of the deceased Rajubhai and therefore the said aspect about the veracity of the version given by the said witness is also doubtful. The prosecution has also examined the witness at Exh. 49- Nareshbhai Chhaganbhai Chavda but he was only available at the house of Rajubhai as Rajubhai has committed suicide at his residence and Nareshbhai Chhaganbhai Chavda being a brother of Rajubhai has deposed, but he is not having any personal knowledge about the earlier incident occurred at the S.T. Depot, Bagasara. Another witness Khodabhai Raghavbhai Chavda, who is examined at Exh. 50, has also stated that thus he was informed about such incidence by Sagarbhai Shamjibhai Chavda and therefore he has no personal knowledge about the alleged incident. The prosecution has also examined witness Shamjibhai Badhabhai Chavda at Exh. 51 and he has also not supported any version given in the complaint by the complainant and he has reached at the residence of Rajubhai where Rajubhai has committed suicide but he is not having anything personal knowledge about the earlier incident occurred at S.T. Depot, Bagasara and therefore he has also not supported the other

witnesses who are examined but they are turned hostile and they have not given any start to the case of the prosecution. Now we considered the Section 306 of the Indian Penal Code which is as under:

“Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

And Section 107 which should be read with Section 107 of the Indian Penal Code which is as under:

“Abetment of a thing.—A person abets the doing of a thing, who-

(i) Instigates any person to do that thing; or

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

(iii) Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend

Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

8. And therefore to prove the element of offence under Section 306, the prosecution must prove the first ingredients of Section 107 which pertains to instigate. It is also fruitful to refer the judgment reported on this aspect for the purpose of considering the aspect to consider the word “**instigate**” the judgment reported in **2002 5 SCC 371** in the case of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** where the Hon’ble Apex Court in para 12 is reproduced as under:

*“Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25.07.1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under **Section 161 Cr.P.C.** when reportedly the deceased, after coming back from the house of the appellant, told him*

*that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under **Section 161 Cr.P.C.** is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25.07.1998 ensued by quarrel. The deceased was found hanging on 27.07.1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25.07.1998 drove the deceased to commit suicide. Suicide by the deceased on 27.07.1998 is not proximate to the abusive language uttered by the appellant on 25.07.1998. The fact that the deceased committed suicide on 27.07.1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25.07.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the*

courts below.”

9. It is also relevant to look at the observations made in para 9 and 12 from recent judgment in the case reported in **2021 SCC OnLine SC 737, Kanchan Sharma Versus State of Uttar Pradesh** and Another which are as under:

“9. Having heard learned counsel on both sides, we have perused the impugned order and other material placed on record. Except the self-serving statements of the complainant and other witnesses stating that deceased was in love with the appellant, there is no other material to show that appellant was maintaining any relation with the deceased. From the material placed on record it is clear that on the date of incident on 04.05.2018 deceased went to the house of the appellant and consumed poison by taking out from a small bottle which he has carried in his pocket. Merely because he consumed poison in front of the house of the appellant, that itself will not indicate any relation of the appellant with the deceased. ‘Abetment’ involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. There is nothing on record to show that appellant was maintaining

relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of Section 306, IPC. Even with regard to offence alleged under Section 3(2)(v) of the Act it is to be noticed that except vague and bald statement that the appellant and other family members abused deceased by uttering casteist words but there is nothing on record to show to attract any of the ingredients for the alleged offence also. This Court in the case of Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) had an occasion to deal with the aspect of abetment. In the said case this Court has opined that there should be an intention to provoke, incite or encourage the doing of an act by the accused. Besides, the judgment also observed that each person's suicidability pattern is different from the other and each person has his own idea of self-esteem and self-respect. In the said judgment it is held that it is impossible to lay down any straightjacket formula dealing with the cases of suicide and each case has to be decided on the basis of its own facts and circumstances. In the case of Amalendu Pal @ J/hantu v. State of West Bengal in order to bring a case within the purview of Section 306, IPC this Court has held as under:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that

in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

10. In the judgment in the case of S.S. Chheena v. Vijay Kumar Mahajan this Court reiterated the ingredients of offence of Section 306 IPC. Paragraph 25 of the judgment reads as under:

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that

in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

11. *In the judgment in the case of Rajiv Thapar v. Madan Lal Kapur this Court has considered the scope of the provision under Section 482, Cr.PC and has laid down the steps which should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings in exercise of power under Section 482, Cr.PC. Paragraph 30 containing the four steps read as under:*

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and

condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

12. By applying the aforesaid ratio decided by this Court, we have carefully scrutinized the material on record and examined the facts of the case on hand. Except the statement that the deceased was in relation with the appellant, there is no material at all to show that appellant was maintaining any relation with the deceased. In fact, at earlier point of time when the deceased was stalking the appellant, the appellant along with her father went to the police station complained about the

calls which were being made by the deceased to the appellant. Same is evident from the statement of S.1. Manoj Kumar recorded on 05.07.2018. In his statement recorded he has clearly deposed that the father along with the appellant went to the police post and complained against the deceased who was continuously calling the appellant and Proposing that she should marry him with a threat that he will die otherwise. Having regard to such material placed on record and in absence of any material within the meaning of Section 107 of IPC, there is absolutely no basis to proceed against the appellant for the alleged offence under Section 306 IPC and Section 3(2)(v) of the Act. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever.”

10. Therefore, in view of the above position when the medical officer has not supported the case of the prosecution and has not found any external injuries which can be caused by kick and fist blows and more particularly when it is unexplained version of the complaint that earlier also Rajubhai was tortured by the accused but Rajubhai has not lodged any complaint but also further unexplained version of the story of the prosecution that when Sagarbhai Shamjibhai Chavda had reached S.T. Depot, Bagasara and thereafter the incident was over he met Rajubhai and Rajubhai has told him about the demand of Rs.500/- and also the threats given by Pratap @ Tiku Vala to the complainant himself that you go away

from the scene of offence otherwise he will be killed by the accused, even then though Bagasara Police Station is just to 10 minutes distance away from S.T. Bus Depot, but they chose not to go to the police station and lodge the complaint and that conduct is also not proper and therefore that conduct is also not inspiring any confidence about the story given by the complainant about the alleged incident, therefore, on re-appreciation and after going through the entire record of the case we have found that the prosecution has failed miserably in proving any ingredients of Section 306, 323, 504 and 506(2) of the Indian Penal Code (hereinafter referred to as 'IPC' for short) as well as Section 3(1)(R), 3(1)(S) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short). As there is no documentary evidence to establish that the complainant and the deceased are from the Scheduled Caste/Scheduled Tribes available on record and the prosecution has also failed to establish said offence under the Act by leading cogent and convincing evidence which can be proved beyond reasonable doubt and hence the Trial Court has rightly acquitted the respondents-accused by giving benefit of doubt, we do not find any illegality or infirmity

with the judgment given by the Trial Court and hence we confirm the judgment and order passed by the learned trial Court as no other interference of this Court is required by exercising of power under Section 378 of the Code of Criminal Procedure, 1973.

11. It is a cardinal principal of criminal jurisprudence that in an acquittal appeal if other view is possible, then also the appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the Trial Court are perverse, contrary to the material on record, probably wrong, manifestly erroneous or demonstrably unsustainable. (***Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225***). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned Trial Court are perverse, contrary to material on record, probably wrong, manifestly erroneous or demonstrably unsustainable.

12. In the case of ***Ram Kumar v. State of Haryana***, reported in ***AIR 1995 SC 280***, Supreme Court has held as under:

“The powers of the High Court in an appeal from order of

acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

13. As observed by the Hon'ble Supreme Court in the case of **Rajesh Singh & Others vs. State of Uttar Pradesh** reported in (2011) 11 SCC 444 and in the case of **Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh** reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the learned Trial

Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned Trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the Trial Court, it might have taken a different view.

14. In the very recent judgment reported in **2021 (15) SCALE Pg. 184** in the case of **Mohan @ Srinivas @ Seena @ Tailor Seena V/s. State of Karnataka**, the Hon'ble Apex Court has observed the scope of section 378 of the Code as under:-

“Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial Court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial Court is both possible and

plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial Court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial Court decides a case on its own merits despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.”

15. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

16. In view of the above and for the reasons stated above, present application for leave to appeal being Criminal Misc. Application No. 20079 of 2021 fails and same deserves to be dismissed and is accordingly dismissed. In view of dismissal of the application for leave to appeal, Criminal Appeal No. 1673 of 2021 also deserves to be dismissed and is accordingly dismissed.

(S.H.VORA, J)

(SANDEEP N. BHATT,J)

DIWAKAR SHUKLA

WEB COPY