

(2011) 04 GUJ CK 0220
In the Gujarat High Court
Case No : Appeal No. 961 of 2000

Dashrathbhai Keshavbhai Vankar and Another APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Dowry Prohibition Act, 1961 — Section 3, 7
Penal Code, 1860 (IPC) — Section 114, 304(B), 306, 498(A)

Citation : (2011) 2 DMC 808

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : E.E. Saiyed, for the Appellant; H.L. Jani, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present appellants have preferred this Appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 12.10.2000 passed by the learned 3rd Joint District Judge (Sessions Judge), Nadiad in Sessions Case No. 131 of 1999, whereby the learned Special Judge has convicted the appellants under Sections 498(A) and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act. For the offences aforesaid learned Special Judge was pleased to order the appellant No. 1 to undergo R.I. for five years and to pay a fine of Rs. 1000, in default, to further undergo S.I. for three months and the appellant No. 2 was ordered to undergo R.I. for three years and fine of Rs. 1000, in default, to undergo further S.I. for three months. The appellant No. 1 was also ordered to pay a fine of Rs. 15,000 for the offence punishable under Sections 3 and 7 of the Dowry Prohibition Act, in default of payment of fine, the appellant No. 1 was ordered to undergo further S.I. for six months. The appellant No. 2 was ordered to be exempted from paying fine considering her age about 70 years. The brief facts of the prosecution case is as under:

2. The allegations levelled against the accused are that on 29.7.1997, the deceased Ramilaben poured kerosene on herself and committed suicide and expired. As alleged in the complaint, the accused persons frequently made demand of dowry from the deceased and they caused mental and physical harassment to the deceased. Therefore, complaint against the accused persons lodged for the offences punishable under Sections 498(A) and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

3. Thereafter, statements of the witnesses were recorded, panchnama was drawn and accused were arrested. Charge-sheets was filed and as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Session, which was numbered as Sessions Case No. 131 of 1999.

4. Thereafter, the charge was framed against the appellants. The appellant-accused pleaded not guilty and claimed to be tried.

5. To prove the case against the appellants, the prosecution has produced documentary evidence and also examined 8 witnesses before the Trial Court.

6. Thereafter, after examining the witnesses, further statement of the appellants-accused u/s 313 of the Code of Criminal Procedure was recorded in which the appellants-accused have denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned 3rd Additional Joint District Judge (Sessions Judge). Nadiad vide judgment and order dated 12.10.2000 held the appellants -accused guilty to the charge levelled against them and sentenced them as stated above.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Sessions Judge, the present appellants have preferred this appeal.

9. Learned Advocate Mr. E.E. Saiyed, submitted" that on one hand the learned Sessions Judge acquitted all the accused for the charge u/s 306 of the Indian Penal Code and on the other hand, learned Judge recorded finding at page 14 that the death of deceased was caused due to persistent demand of dowry by the appellants and in a very strange and surprising manner, the learned Sessions Judge took presumption that the appellants were responsible for the death of deceased for want the dowry, even though there is no charge of dowry death u/s 304-B of the Indian Penal Code and even though the deceased did not make any single allegations regarding cruelty, demand of dowry and even any role on the part of the appellants accused in the dying declaration before the Executive Magistrate and Doctor. He further submitted that all the allegations regarding cruelty and demand of dowry are vague and general in nature. Mr. Saiyed, learned Advocate submitted that the witnesses have clearly stated in their evidence on oath that they have not given any statement before the police regarding any kind of allegations. The FIR was registered after 18 days from the incident and no explanation was rendered on the part of the prosecution

regarding delay in filing FIR. He submitted that there is another set of evidence which exonerates the accused in the form of two dying declarations of victim as well as evidence of P.W.6 at Exhibit 34, Kishansingh Shankersingh, who is brother of the deceased, stated in his evidence that there was no cruelty on deceased as also there was no demand of dowry made by the appellants. The allegation of dowry of Rs. 3,00,000 is vague and general and after thought after 18 days of the incident and regarding dowry demand, there was no any complaint was lodged before the incident in question. The appellant No. 1 is a teacher in Primary School at Ahmedabad and his only child Ronak is presently in the illegal custody of his in-laws and the appellant has to make the arrangement for securing lawful custody. The appellant No. 2 is old lady of 70 years and her condition is miserable and there is nobody to look after her. Learned Advocate Mr. Saiyed submitted that the judgment and order passed by the learned Sessions Judge is not just and proper and erroneous. Therefore the same is required to be quashed and set aside by allowing this Appeal.

10. The learned APP Mr. Jani for the State submitted that learned Sessions Judge has rightly passed the order of conviction and it is not required to be disturbed by allowing this Appeal. The marriage span of the deceased with the accused No. 1, was only one year and six months and the prosecution has established the case against the accused by producing documentary as well as oral evidence and learned Sessions Judge has rightly appreciated the evidence. Therefore, the appeal is required to be dismissed by confirming the judgment and order passed by the learned Sessions Judge.

11. I have perused the record of the case and have also considered the submissions made by the parties. I have also perused the judgment and order of conviction passed by the learned Sessions Judge. It appears from dying declaration recorded at Exhibit 15, in column No. 7. wherein it is admitted by the deceased that at about 11.00 hrs. at night, when she was entering the wick into the stove (primus), she got burn injuries. I have perused the oral evidence of P.W.3 - Jagdishbhai Sundarlal, Executive Magistrate and he stated in his evidence that the deceased died when she was inserting the wick into the stove, the accident occurred. The said fact was proved through the oral evidence of the other witnesses. Even from the second dying declaration recorded before the first grade Jamadar at L.G. Hospital, at Exhibit 23. it appears that at about 10.30 hrs. when she was lightening the stick through the match-box, she got burn injuries. The certificate at Exhibit 22, the same history was given by the deceased and stated that she was spilling over the milk on the stove. I have perused the judgment and order passed by the learned Sessions Judge and also perused the panchnama at Exhibit 17, wherein it is stated that the lightening stick fell on the cloth of the deceased and therefore, the accident occurred. Therefore, this Court is of the opinion that both the dying declarations, one recorded before the Executive Magistrate and another recorded before the first grade Jamadar, L.G. Hospital, wherein the deceased herself stated that she got injuries due to accident, therefore, it is established that the due to accident, the deceased got

burn injuries and died. Even the brother of the deceased Kishansinh Shankarsinh Parmar, P.W.6 at Exhibit 34, has admitted that when the deceased was lightening the stove, she got burn injuries due to accident. Therefore, it is established that the prosecution has totally failed to prove the case against the accused. Therefore, this Court is of the opinion that the judgment and order passed by the learned Sessions Judge is required to be quashed and set aside.

12. In view of the above, the Appeal is allowed. The judgment and order dated 12.10.2000 passed by the learned Third Joint District Judge, Nadiad in Sessions Case No. 131 of 1999, is quashed and set aside. The appellants are hereby acquitted from all the charges as alleged against them. Bail bonds, if any, shall stand cancelled. If fine is paid by them, the amount will be refunded to the appellants. Record and proceeding be sent back to the concerned Trial Court.