
(2016) 01 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 178 of 2006

Harishbhai Hakmaji Prajapati

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 114, Section 302, Section 304, Section 498-A

Citation : (2016) 01 GUJ CK 0049

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Abhaykumar P. Shah, Advocate, for the Appellant; L.R. Pujari, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. Challenge is made to the judgment and order dated 29.11.2005 passed by learned Presiding Officer and Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad in Sessions Case No. 179 of 2004 in this appeal whereby learned Sessions Judge has been pleased to convict the accused No. 1 and imposed the sentence upon him to undergo life imprisonment and fine of Rs. 2,000/- in default, two months SI for the offences punishable under sections 302 read with section 114 of IPC, accused No. 1 is also ordered to undergo rigorous imprisonment for one year and fine of Rs. 1000/-, in default, two months simple imprisonment for offence punishable under section 498-A read with section 114 of IPC and ordered to run all the sentences concurrently.

2. The broad facts of the case are that the marriage of Ashaben - daughter of the complainant took place with accused No. 1 in 1999. It is the case of the prosecution that after keeping good relation for one year with the daughter of the complainant by the accused and his relatives, they started giving mental torture and physical harassment by raising quarrel on trivial issues. It is alleged that the accused and his relatives also started taunting the daughter of the

complainant. It is also alleged that the wife of the complainant received phone call on 5.7.2004 that Asha had sustained burnt injuries and she had been admitted in V.S. Hospital and during the course of the medical treatment, Asha - daughter of the complainant died on 2.8.2004. Ultimately, the complainant lodged the complaint.

3. On the basis of the said complaint, FIR bearing CR No. I - 178 of 2004 came to be registered before the Sola Police Station. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the chargesheet against the accused. As the case was exclusively triable by the court of sessions, the same was committed to the Court of Sessions, Ahmedabad (Rural). The charge was framed against the accused vide Exh. 12. The accused pleaded not guilty to the charge and claimed to be tried. To prove the case against the accused, the prosecution has examined the following 20 witnesses.

3.1 The prosecution has also produced the as many as 25 documentary evidences viz., original complaint at Exh. 19, P.M. Note at Exh. 23, copy of inquest panchnama at Exh. 61, panchnama at Exh. 70 etc.

3.2 At the end of the trial, after recording the statement of the accused under section 313 of the Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the trial Court delivered the judgment and order, as stated above. Being aggrieved by the same, the appellant - original accused No. 1 has preferred the present appeal.

4. We have heard Mr. Abhaykumar P. Shah, learned counsel for the appellant and Mr. L.R. Pujari, learned APP for the State.

5. At the outset, it is submitted by Mr. Shah, learned counsel for the appellant that the motive alleged by the complainant for the alleged commission of offence is unbelievable because it is a case of the prosecution that for trivial issues, quarrel took place between the accused and deceased Asha - daughter of the complainant. He submitted that the medical evidence and evidence of complainant do not prove the commission of offence in the manner in which it is alleged. In his submission, therefore, learned trial Judge has committed serious error in convicting the accused for the offence punishable under section 302 of IPC by passing the impugned order. He submitted that in view of the medical evidence, the death has occurred after 29 days of the incident in question and the cause of death is shock as a result of burns and its complications. He submitted that the Court below ought not to have convicted the accused for the offence under section 302 of IPC and at the most, he could have been convicted u/s. 304 Part-II of IPC. In support of his submissions, learned advocate for the appellant relied upon the decision in the case of Maniben Vs. State of Gujarat, reported in , (2009) 8 SCC 796 and also the decision in the case of B.N. Kavatakar and another Vs. State of Karnataka, reported in 1994 Supp. (1) SCC 304.

6. On the other hand, Mr. L.R. Pujari, learned APP has supported the impugned

judgment insofar as the conviction of accused is concerned. He, however, submitted that the Court below ought not to have acquitted accused No. 3 - Tolaram Hakmaji Prajapati of the charges under section 302 read with section 114 of IPC and ought to have convicted him for the said offence also.

7. We have examined the matter carefully and gone through the evidence on record. We have appreciated, reappreciated and re-evaluated the evidence on the touchstone of latest decision of the Hon"ble Apex Court. The medical evidence of Doctor Tapan Jitendrabhai Mehta, PW 2 who has performed the postmortem has narrated the cause of death in column No. 23 of the postmortem that the death has caused due to shock as a result of burns and its complications. It the contention of learned counsel for the appellant that death is caused after 29 days from the date of incident in question. Learned advocate for the appellant has restricted his argument on the question of quantum of sentence. Thus, in view of the evidence of PW 2 who has narrated the incident completely and whose evidence has gone unimpeachable in the cross examination, we find that conviction of the accused u/s. 302 of IPC is erroneous. Therefore, we find substance in the submission advanced by learned counsel Mr. Shah that the offence committed by the accused would fall u/s. 304 Part-II of IPC. Therefore, taking into consideration the medical evidence on record and as contended by learned advocate for the appellant that the death is caused after 29 days from the date of incident in question and in view of the decisions of the Apex Court in the case of Maniben (supra) and B.N. Kavatakar (supra), we are of the considered opinion that conviction u/s. 302 IPC of the accused is required to be altered to one u/s. 304 Part-II IPC and the accused is required to be ordered to undergo imprisonment for five years.

8. In view of the above, Criminal Appeal stands partly allowed. The impugned judgment and order dated 29.11.2005 passed by learned Presiding Officer and Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad in Sessions Case No. 179 of 2004 is modified to the extent that conviction u/s. 302 IPC of accused No. 1 is altered to one u/s. 304 Part-II IPC and the accused is ordered to undergo rigorous imprisonment for five years. The period of sentence already undergone by accused No. 1 be given set off. If the accused is on bail and if he has not undergone the rigorous imprisonment for five years, the accused No. 1 shall surrender before the jail authority to serve the remaining sentence within a period of ten weeks. Bail bond, if any, of the accused stands cancelled. Rest of the impugned judgment and order is not disturbed. Records and proceedings, if lying here, be sent to the trial Court concerned forthwith.