

(2008) 08 GUJ CK 0074
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 692 of 2008 in Criminal Appeal No. 106 of 2008

Harshadbhai Bharatbhai Ramavat

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 389
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 114, 302, 306, 498A

Citation : (2008) 3 GLR 2345

Hon'ble Judges : J.R. Vora, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Jayprakash Umot, for the Appellant; M.R. Mengdey, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Vora, J.—Above Criminal Appeal is preferred by original accused No. 1 of Sessions Case No. 36 of 2005 of the Court of Fast Track at Porbandar, against the judgment and order delivered by Additional Sessions Judge, Fast Track Court, Porbandar, on 15th of November, 2006, whereby the present appellant being accused No. 1 came to be convicted for the offence punishable u/s 306 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of 10 years and to pay fine of Rs. 25,000/- as well as he was also convicted for the offence punishable u/s 498-A of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of three years and to pay fine of Rs. 10,000/-.

2. Criminal Appeal No. 106 of 2008 filed by original accused No. 1 came to be admitted by this Court vide Order dated 11th of July, 2008.

3. The present applicant - appellant in Criminal Appeal No. 106 of 2008 has also preferred present Criminal Misc. Application No. 692 of 2008 u/s 389 of the Code of Criminal Procedure, 1973, for suspension of the sentences awarded to him and

to release him on bail during pendency of Appeal. In all there were five accused in the said Sessions Case. Present appellant - accused No. 1 came to be convicted, as aforesaid, and his father accused No. 4 also convicted for the offence punishable u/s 498-A of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of three years and to pay fine of Rs. 10,000/- and he has filed Criminal Appeal No. 1413 of 2007 against his conviction before this Court, and as submitted, he has been released on bail pending the said Appeal. However, Criminal Appeal No. 1413 of 2007 is not the subject matter of the present application. Rest of the three accused came to be acquitted by the Trial Court. There is no acquittal appeal till date preferred by the State against the said accused who are acquitted.

4. As per the brief facts of the prosecution case, initially, an offence came to be registered against all the five accused under Sections 302, 498-A and 114 of the Indian Penal Code. Accused No. 1 happens to be husband of the deceased Alkaben while accused Nos. 2 and 3 happen to be younger brothers of accused No. 1. As afore-stated, accused No. 4 happens to be father of accused No. 1 and accused No. 5 is mother of accused No. 1. Accused No. 1 - present appellant married with deceased Alkaben on 8th of August, 1997, daughter of complainant Gunvantrai Purshottamdas Acharya and resumed the residence of in-laws at Porbandar. Deceased Alkaben in joint family of the accused resided for eight months. Thereafter, all the accused treated the deceased with physical and mental cruelty. As per the case of the prosecution, during this period, accused No. 4 exposed indecent behaviour before the deceased and at one time tried to catch the hands of the deceased and, therefore, deceased left the house of the in-laws and stayed thereafter with her parents even during the pendency of her marriage. It appears that after five years, some compromise took place between the parties and deceased again resumed in-laws house in joint family consisting of all the five accused. There also, it is the prosecution case in nutshell that within 10 days, she returned to her parental home because she had suffered mental and physical torture. Her parental home was at Bhavnagar and ultimately she decided and conveyed her parents that it was almost impossible for her to live at her in-laws house. During this time, she was doing job as Vidhya Sahayak at village - Ambala, Taluka -Talaja because she had studied upto B.A., B.Ed. She again attempted to stay with in-laws but one/two time she came back to Bhavnagar on account of cruelty from the accused. On 2nd of October, 2004, accused No. 1 tried to contact deceased Alkaben, at that time, Alkaben was at Junagadh with her sister Jyotiben. Thereafter, it appears that, some communication might have taken place between the accused No. 1 and Alkaben because on 3rd of October, 2004, from Porbandar Alkaben informed her parents that she was to come to Bhavnagar on next day, but Alkaben did not return to Bhavnagar. On next day, at about 13.00 hours, a phone was received by parents of the deceased from a friend of accused No. 1 informing that the health of Alkaben was very serious and parents should reach Porbandar and thereafter accused No. 1 also informed the parents and summoned them to Porbandar and

conveyed that Alkaben had hanged herself on the fan and had died. Parents reached at Porbandar, then process of postmortem report, etc. had taken place and ultimately Gunvantrai Purshottamdas Acharya filed a police complaint in this regard on 4.10.2004 before Deputy Police Superintendent, Porbandar City. A crime came to be registered for the offences punishable under Sections 302, 498(A) and 114 of the Indian Penal Code against the accused and charge sheet was filed and case was committed to the court of Sessions. The charge was framed by the learned Additional Sessions Judge, u/s 302 but two out of five accused, came to be convicted, as stated, and this is an application of accused No. 1 in Criminal Appeal No. 106 of 2008 u/s 389 of the Code of Criminal Procedure, for bail.

5. Learned Advocate Mr. S.V. Raju on behalf of the applicant took us to the deposition of the witnesses in detail even at this juncture also. We have gone through the deposition of Gunvantrai Purshottamdas Acharya, examined at Exhibit-42; First Information Report produced at Exhibit-43; deposition of Hansaben Guvantrai, examined at Exhibit-62; deposition of Jyotiben Rajendrabhai Nimavat, examined at Exhibit-80 and other documentary evidence as well as oral testimonies. Learned Advocate Mr. Raju vehemently urged that the marriage took place on 8th of August, 1997 and the incident occurred on 4th of October, 2004 and, therefore, the marriage span is more than seven years and no presumption u/s 113-A of the Evidence Act could be raised nor the allegations regarding dowry is advanced by the prosecution. Relying upon the deposition of complainant Gunvantrai Purshottamdas Acharya, it has been vehemently urged that what is stated by this witness is nothing but ordinary skirmishes between the husband and wife and the fact is also revealed that the deceased was insisting to live separately, for which accused No. 1 had also arranged one flat, but on account of "sharaddh" the accused No. 1 requested Alkaben to wait for some time, so that "Badomen" period being over, they can live separately, but deceased was not prepared for that and committed suicide. Learned Advocate Mr. Raju also draw our attention to the deposition of witnesses, as above stated, who are relatives of the deceased. It has been submitted that going through the evidence of these witnesses, it is clear that, no cruelty, as envisaged by Section 498-A of the IPC is disclosed. There is no such evidence to come to the conclusion that any of the accused treated the deceased with such cruelty, which would drive the deceased to commit suicide. The allegations made against accused No. 4 about indecent behaviour was the incident before five years of the incident and it cannot be linked with the present incident. On the contrary, it is revealed from the evidence that accused No. 1 - husband was assisting the deceased for her transfer to Porbandar because Alkaben was serving as Vidhya Sahayak. Very general and vague allegations about taunting etc is made in the depositions, which would not constitute cruelty as envisaged u/s 498A of the IPC and no presumption can be raised that Alkaben was forced to commit suicide. Learned Advocate Mr. Raju assessing the reasoning for the conviction by the Trial Court, submitted that the learned Trial Judge nowhere stated in the judgment

that what kind of cruelty was executed upon the deceased Alkaben and what kind of cruelty was proved to the extent which had driven Alkaben to commit suicide. Learned Advocate Mr. Raju stated that, on the contrary, the learned Trial Judge has mentioned only word "cruelty" everywhere in the judgment without defining the ingredients and the type of cruelty which might have been proved through the evidence of the witnesses and reading evidence of the above witnesses, there is no iota of evidence establishing cruelty within the meaning of Section 498A of the Indian Penal Code. It is vehemently submitted that the learned Trial Judge has wrongly taken aid of explanation of the accused u/s 313 of the Code of Criminal Procedure wherein the accused stated that the deceased was demanding ornaments and separate residence, and on account of "shraddh" accused No. 1 - husband of the deceased, requested to the deceased to wait till the sharaddh period was over and in emotional state of mind, Alkaben committed suicide. Learned Advocate Mr. Raju submitted that the learned Trial Judge wrongly treated this explanation as evidence and appreciated the same in coming to the conclusion to hold accused No. 1 guilty for the aforesaid offence. It is submitted that the prosecution has relied upon diary at Exhibit - 48 stated to have been written by the deceased. The said diary is ambiguous and nothing could be made out from Exhibit - 48 which is wrongly appreciated by the Trial Court. In short, learned Advocate Mr. Raju submitted that from the evidence recorded, no cruelty could be established and the learned Trial Judge wrongly come to his conclusion in this respect and, therefore, there are good chances of Appeal be allowed and, hence, applicant be released on bail after suspending the sentences awarded to him. It is submitted that even otherwise, 10 years imprisonment is awarded to accused No. 1 and it is a short sentence and according to various decisions of the Apex Court, accused is entitled to bail during the pendency of Appeal in cases of short sentences. So far as meaning of cruelty is concerned, learned Advocate Mr. S.V. Raju relied upon the following decisions:

in the matter of State of Gujarat Vs. Sunilkumar Kanaiyalal Jani,

in the matter of Indrasing M. Raol v. State of Gujarat as reported at 1993 (3) GLR 2356;

in the matter of Gurucharan Kumar and Another Vs. State of Rajasthan,

in the matter of Sakatar Singh and Others Vs. State of Haryana,

in the matter of State of Maharashtra Vs. Ashok Narayan Dandalwar,

6. It is submitted that accused No. 1 is arrested on 05th of October, 2004 and he is in custody right from that date, which is almost four years. It is, therefore, requested to allow this application.

7. Learned A.P.P. Mr. M.R. Mengdey, appearing on behalf of the State and assisted by learned Advocate Mr. S.P. Kotia, on behalf of the complainant, who has submitted written arguments on record, was heard and written arguments

was also taken into consideration as submitted by learned Advocate Mr. Kotia through learned APP. Mr. Mengdey, learned APP draw attention of this Court on the depositions of the complainant Gunvantrai Purshottamdas Acharya, at Exhibit-42, specially on paras 3, 4, 5, 7, 8 and 9 of the deposition along with para 17. It is submitted that along with this, the evidence of PW-10 Hansaben Gunvantrai, mother of the deceased, at Exhibit-62 and the evidence of Swatiben Kishankumar, at Exhibit-63 as well as Jyotiben Rajendrabhai Nimavat, at Exhibit -80, should be read together. Without entering into the merits at this stage, according to learned APP Mr. Mengdey, from the evidence of these four witnesses, it is amply proved by the prosecution that the deceased was met with the cruelty within the meaning of Section 498-A of the IPC and, therefore, she committed suicide. It is submitted that evidence of PW No. 17 Jaydevsinh Khengarsinh Chudasama, establishes beyond doubt that there were disputes between the husband and wife and this independent witness had intervened to effect compromise between the parties, wherein Alkapen had complained that she was treated with cruelty. This is, according to learned APP Mr. Mengdey, not a fit case to enlarge the accused on bail during pendency of Appeal as cruelty is established and it is established that on account of cruelty, Alkapen committed suicide, there is no question whether presumption had arisen or not. It is revealed according to learned APP Mr. Mengdey that the deceased was found dead hanging on fan from the residence of accused No. 1 and these circumstances were required to be explained by the accused and when they explained these circumstances in further statement recorded by the Trial Court and the same were referred by the Trial Court, it cannot be said that the Trial Court has used this explanation as evidence. It is submitted that, in such heinous crime, accused may not be released on bail after suspending the sentence and the application is required to be rejected.

8. Having heard learned Counsels for the parties, we have extensively gone through the record and proceedings and the paper book carefully prepared by the learned Advocate for the applicant.

9. It is the settled law that for suspending execution of sentences, the court will look to the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of offence and the desirability of releasing the accused on bail. It is not necessary at all for the court to re-appreciate the evidence at this stage, but prima facie, case appearing from the record. This exercise is required to be taken particularly with reference to the contentions raised by learned Counsels for the parties. Convict may point out the glaring infirmities in the prosecution case which would be touching to the vital aspect and the very substratum of the case of the prosecution. Considering, prima facie, such infirmities to be resulting in acquittal, the accused in such appeals, may be admitted to bail, but, however, if the appellate court is not able to take such a view, the course which appears to be open is to reject the plea of bail after rejecting the request for suspension of sentence.

10. We have in detail gone through the evidence of PW-9 Gunvantrai Purshottamdas Acharya, Exhibit-32; Hansaben Gunvantrai, PW-10, Exhibit-62; PW-11 Swatiben Kishankumar, Exhibit-63; PW-14, Jyotiben Rajendrabhai Nimavat, Exhibit-80 and evidence of Jaydevsinh Khengarsinh Chudasama, PW-17, Exhibit-84 and other evidences recorded during trial. We have also gone through the reasons assigned by the Trial Judge for coming to the conclusion in respect of the cruelty, which is established by the prosecution. From the above, we are unable to take a view as Mr. Raju, learned Advocate for the applicant submitted that there was no evidence at all in respect of cruelty as envisaged u/s 498-A of the Indian Penal Code. In the year 1997, the marriage of accused No. 1 and Alkaben was solemnized and within eight months she was taken back to Bhavnagar. In the year 2003, after compromise she was taken to Porbandar and again she stayed for sometimes and had returned back to her parents. Again, after compromise, before the incident, she was taken to Porbandar and this incident occurred. Without entering into further merits of the case or appreciating the evidence further, we come to the conclusion that there is no glaring infirmities in the prosecution case whereby, at this juncture, we come to the conclusion that no case was made out at all by the prosecution of cruelty executed upon the deceased by accused No. 1. We do not find at this juncture any glaring error in the reasoning of the trial judge to come to the conclusion. Only because the marriage span is more than 7 years, prosecution is not debarred from establishing cruelty.

11. When we scanned through the evidence, at this stage it is revealed through the evidence of PW-9 Gunvantrai Purshottamdas Acharya, examined at Exhibit-42 that, at first instance, deceased stayed at her in-laws for about eight months and thereafter she was required to be brought to her parental home, and that itself is the circumstance which denotes cruelty on the part of accused No. 1, as categorical mention of indecent behaviour of the father of the accused No. 1 has been deposed. Not only that, in para-7 of his deposition, it has been stated by this witness that when second time an attempt was made to settle deceased at her in-laws house, Alkaben stated to this witness that she did not intend to stay with her in-laws because they were executing cruelty upon her in small things like household works. Not only that but accused No. 1 had couple of times beaten her. It is also revealed in evidence that accused No. 1 had threatened the deceased that he would cause the legs of her brother broken. Then, again, not once but two/three times, attempts were made by the father of the deceased to settle her at in-laws, but on account of mental cruelty, as envisaged above, it had become impossible for the deceased to stay with in-laws. This can be read from the evidence and the circumstances emerging from this evidence, at least, at this juncture, would not warrant a conclusion tentatively that there is no evidence of cruelty as envisaged by Section 498-A of the Indian Penal Code. Documentary evidence like diary, kept by the deceased is also produced on record.

12. From the evidence of father of the deceased i.e. Guvantrai Purshottamdas

Acharya, the cruelty is established and this witness is further fortified by the evidence of Hansaben, mother of the deceased. She also has stated that in compelling circumstances, the deceased was brought to Bhavnagar and a job was obtained by her. Deceased has also stated that all of them i.e. her in-laws are executing cruelty upon her. Further the circumstance in which the incident has occurred itself is an evidence of cruelty. After long period of separation, on one fine day, the deceased was called by accused No. 1, and on the day of the incident, in a room where only husband and wife has access, she is found dead i.e. hanged on the fan. No Hindu wife would commit suicide only on emotional ground or on the grounds that she wanted to live separately or she wanted some ornaments which were refused by accused No. 1 on account of sharaddh. It must not be forgotten that the deceased was an educated lady and with this disharmony with her in-laws, she tossed herself from Porbandar to Bhavnagar and Bhavnagar to Porbandar. Even PW-11 Swatiben Kishankumar, examined at Exhibit-13 in para-4 categorically stated that in the month of December, after her delivery, when she returned to Bhavnagar, deceased was at Bhavnagar and stated that there was harassment from her father-in-law. Deceased also complained that her in-laws were not behaving properly with her and in small things, in-laws were beating her and running her down in everything. The deceased confided with this witness and stated that she was not prepared to put any reliance upon her father-in-law and, therefore, she was requesting to have separate residence and thereafter independent witness PW-17 Jaydevsinh Khengarsinh Chudasma corroborates that there was some compromise talk between the parties and deceased was required to be brought to Bhavnagar from her in-laws. No Hindu lady, on her volition, after marriage, would choose for no reason to stay at her parents residence, more so when, the wedlock was subsisting in this doldrums for about seven years. It was not a case that deceased did not like to stay with her husband and, therefore, reverting to her parental home. Swatiben's evidence is to be appreciated in this scenario and circumstances surrounding the whole episode and when we read this evidence, without appreciating the same, at least, we are unable to reach to that conclusion, for which learned Advocate for the applicant - appellant Mr. Raju vehemently argued that there was no evidence of cruelty. There cannot be category in degrees of cruelty between spouses. Simply ignoring a spouse and denying her status in the family is worst mental cruelty to be executed upon a spouse. As stated above, there is evidence of even physical beating. Therefore, from the evidence of above four witnesses, for the purpose of this application, it is amply established that there had been cruelty executed upon the deceased for which she committed suicide.

13. Thus, reading the evidence of above witnesses as it is and without appreciating the same and after assessing the reasons advanced by the Trial Judge for convicting the accused No. 1, we do not accept the contentions raised on behalf of the appellant that the cruelty within the meaning of u/s 498A of the Indian Penal Code could not be established by the prosecution and the reasons

assigned and conclusions arrived at by the Trial Judge are without any evidence on record and are erroneous. Serious crime is alleged against the accused and sentence of 10 years imprisonment, cannot be said to be that short sentence as to entitle the applicant accused to release him on bail after suspending the sentence in case of this type and, hence, application deserves to be dismissed. In criminal cases, conclusions are arrived at on the peculiar facts of each case. The decisions which the learned Advocate Mr. Raju has referred are the decisions pertaining to the facts of that case after appreciating the evidence fully on facts of each case. At this juncture, we are not permitted to appreciate the evidence fully, but to see what is the prima facie case, and as stated above, when there is a prima facie case in favour of the prosecution only because the accused is sentenced to 10 years imprisonment, benefit of Section 389 to suspend the sentence and to enlarge the accused on bail cannot be extended to accused No. 1.

14. In view of above discussion, this application stands dismissed. Rule discharged. In view of the period for which accused No. 1 is in custody, it is directed that Appeal be expedited. As soon as the paper book is received, Office is directed to notify the Appeal for final hearing. Record and Proceedings summoned from the Trial Court be transmitted back immediately to the Trial Court for preparing paper book as early as possible.