

(2005) 09 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 549 of 2002

Jawahar Maghji Sindhi Bansali and Another
Vs

APPELLANT

State of Gujarat

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 306, 313, 498A

Citation : (2006) CriLJ 1717 : (2006) 1 GLR 719

Hon'ble Judges : Bankim N. Mehta, J

Bench : Single Bench

Advocate : Shakeel A. Qureshi and Sadhana Sagar, Nos. 1 and 2, for the Appellant; I.M. Pandya, Assistant Public Prosecutor, for the Respondent

Judgement

Bankim N. Mehta, J.—This is an appeal preferred by the appellants-convicts challenging the judgment and order of conviction passed by the learned Additional Sessions Judge, Junagadh on 6-6-2002 rendered in Sessions Case No. 149 of 1994 convicting the appellants for the offences punishable under Sections 498-A and 306 read with Section 114 of Indian Penal Code directing the appellant No. 1-Jawahar Meghajibhai to undergo rigorous imprisonment of three years and to pay fine of Rs. 2,000/- in default thereof to undergo further rigorous imprisonment of two months for the offence punishable u/s 498-A and to undergo rigorous imprisonment of seven years and to pay fine of Rs. 3,000/- in default thereof to undergo rigorous imprisonment of three months for the offence punishable u/s 306 and convicting appellant No. 2-Meghajibhai Hemantdas to undergo sentence of rigorous imprisonment of three years and to pay fine of Rs. 2,000/- in default thereof to undergo rigorous imprisonment for two months for the offence punishable u/s 498-A and to undergo five years rigorous imprisonment and to pay fine of Rs. 2,000/- in default thereof to undergo rigorous imprisonment for two months for the offence punishable u/s 306 of the Indian Penal Code.

2. In brief, prosecution case was that complainant Hemantdas, the father of

deceased Draupadi lodged a complaint before police on 21st July, 1986 alleging that his daughter Draupadi aged about 18 years was married to appellant No. 1-Jawahar before about eight months of the incident. On 20th July, 1986 in the evening at about 7-50 p.m., the appellant No. 1-Jawahar informed him that Draupadi has died on account of burns. Therefore, the complainant and his son Jethanand went to the house of appellant No. 1-Jawahar and saw that Draupadi had died on an account of burns in the kitchen. It is further alleged that appellant No. 1-Jawahar was not doing any work since before two months of the incident and was demanding money for business from him (complainant). However, he did not give any money to appellant No. 1-Jawahar (son-in-law), therefore, appellant No. 1-Jawahar used to give physical and mental cruelty to his daughter. Draupadi's mother-in-law Shantaben Meghjibhai and father-in-law appellant No. 2-Meghjibhai Hemantdas were also harassing her. On the day before the incident in the morning, his daughter Draupadi came to his house and told him that her mother-in-law and present applicants have not given her food since two days and her father-in-law and mother-in-law had asked her not to go to her parent's house, but she has come on the pretext of "darshan". Thereby, the present appellants and mother-in-law of the deceased Draupadi were harassing his daughter and on account of such physical and mental cruelty, she was induced to commit suicide.

3. On the basis of the complaint, the investigation started. At the end of investigation, a charge-sheet was laid against the present appellants and mother-in-law-Shantaben. The learned Magistrate committed the case for trial to the Sessions Court. The prosecution produced death certificate of Shantaben declaring that she has died on 19-1-2000. Therefore, the case was abetted against her. Thereafter, learned Sessions Judge framed charge against the present appellants for the offences punishable under Sections 498-A, 306 and 114 of the Indian Penal Code. The appellants pleaded not guilty to the charge and demanded trial. Therefore, the prosecution adduced evidence before the trial Court. On completion of prosecution case, the further statements of the appellants were recorded u/s 313 of the Indian Penal Code wherein the appellants raised a defence of total denial and contended that a false case is filed against them. After hearing the oral submissions, the learned trial Judge found appellants guilty for the offences charged against them and directed them to undergo aforesaid sentence of imprisonment. The appellants have challenged this order of conviction.

4. It is submitted by learned Advocate Ms. Sadhna Sagar that the incident took place in 1986 and the appellants were convicted after about 16 years of the alleged incident. There is no evidence of cruelty allegedly inflicted upon deceased Draupadi. More particularly, when the marriage period between the applicant No. 1-Jawahar and deceased Draupadi was only eight months. She has also submitted that the complainant has wrongly implicated the whole family of daughter's in-laws which itself shows the conduct of the complainant, and therefore, the order of sentence should be set aside.

5. Learned Additional Public Prosecutor Mr. Pandya has supported the judgment and has contended that the learned trial Judge, after appreciating the evidence on record has rightly convicted the appellants and no interference is warranted in the findings recorded by the trial Court.

6. Learned Advocate Ms. Sadhna Sagar for the appellants has confined her arguments to the period of sentence of imprisonment inflicted on appellant No. 1-Jawahar. She has submitted that she does not raise any objection with regard to the finding of guilt of this appellant. However, she has submitted that looking to the family background and the period of marriage between the appellant No. 1-Jawahar and deceased and also considering the fact that the incident took place before about 16 years, the period for which the appellant is directed to undergo imprisonment is harsh and Court should reduce the sentence of imprisonment. She has relied on a judgment of Mohd. Hoshan and Another Vs. State of A.P., She has also submitted that so far as appellant No. 2-Meghjibhai Hemantdas Sindhi is concerned, there is no evidence against him, therefore, he should be acquitted.

7. In view of fact that the learned Advocate for the appellants has confined her arguments only with regard to sentence of imprisonment imposed upon appellant No. 1-Jawahar, I am not required to go into the details of evidence against him, however, in view of the submissions qua appellant No. 2-Meghjibhai, incriminating evidence found by the trial Court is required to be re-appreciated.

8. It appears from the F.I.R. Exh. 20 that the complainant Hemantdas had alleged ill-treatment and harassment to his daughter by appellants, however, the complainant has not made any specific accusation of ill-treatment and harassment by appellant No. 2-Meghjibhai and mother-in-law - Shantaben, but has only stated that they were harassing Draupadi. It also appears from the complaint that on the previous day of incident, Draupadi came to his house and informed that her in-laws have not given her food, however, it appears from the evidence of P.W. 3-Parvati Exh. 21 who is the mother of Draupadi that Draupadi and her sister-in-law (sister of appellant No. 1-Jawaharbai - "Nanand") Champa had come to their house as Draupadi was observing some "Vrat". She has also deposed that Draupadi had not taken food as family members had scolded her, but she has not stated that appellant No. 2-Meghjibhai had scolded her or he did not give her food. In view of this except vague accusation of ill-treatment, no specific accusations are made against appellant No. 2-Meghjibhai.

9. Complainant P.W. 1-Hemantdas Exh. 7, the father of deceased Draupadi has also not made any specific accusation in his oral evidence except accusing that the present appellant No. 2-Meghjibhai and mother-in-law inflicted mental and physical cruelty. There is no evidence with regard to physical cruelty allegedly inflicted by appellant No. 2-Meghjibhai. In the oral deposition also, the witness has not given any specific instances of physical or mental cruelty allegedly inflicted to deceased Draupadi.

10. The prosecution has also examined mother of deceased P.W. 3-Parvatiben Exh. 21, but she has also not given any specific instances of harassment allegedly given by appellant No. 2-Meghjibhai. She has also made vague accusations. The other witnesses P.W. 5-Chandumal Exh. 23 who is the brother of complainant has also in his evidence stated that Draupadi told him that her in-laws were harassing but has not made specific accusation. In view of this, except vague and general accusations, there is not specific accusation against the appellant No. 2-Meghjibhai. Similarly, the other witnesses who were the family members of deceased Draupadi have also not given any specific instances of ill-treatment and harassment by appellant No. 2-Meghjibhai. In view of this, it is difficult to believe that appellant No. 2-Meghjibhai had inflicted physical and mental cruelty to deceased Draupadi which induced her to commit suicide.

11. The prosecution has adduced evidence of near relatives of Draupadi only. In this case, the marriage period between Draupadi and appellant No. 1-Jawahar was of about eight months. It is found from the evidence that Draupadi stayed at her matrimonial house for about three months, and thereafter, came to her parental house but returned before about eight days of the incident. However, there is no evidence that Draupadi was reluctant to return to her matrimonial house on account of harassment by the appellant and their family members. Even the family members who have been examined have not made any specific accusation of ill-treatment by appellant No. 2-Meghjibhai. Therefore, appellant No. 2-Meghjibhai cannot be convicted on such a weak piece of evidence. There is no other evidence which would indicate that the appellant No. 2-Meghjibhai was inflicting physical and mental cruelty to deceased Draupadi.

12. In view of above, the order of conviction and sentence passed against the appellant No. 2-Meghjibhai is required to be set aside.

13. As regard the sentence of imprisonment imposed on the appellant No. 1-Jawahar is concerned, the trial Court has inflicted punishment of imprisonment of seven years for offence u/s 306 and three years for offence u/s 498-A of Indian Penal Code. Both the sentences are directed to run concurrently. Learned Advocate Ms. Sadhna Sagar has submitted that as per inquest panchnama Exh. 13, the appellant No. 1-Jawahar was aged about 19 years and considering the fact that the incident took place long ago, the order of sentence of imprisonment of seven years is harsh and the Court should have considered this while imposing sentence.

14. In the judgment relied upon by the learned Advocate for the appellants, the Hon'ble Supreme Court reduced the sentence of imprisonment for offence under Sections 306 and 498-A of Indian Penal Code and modified the sentence of imprisonment for the period already undergone, considering the fact that the incident took place on 9-3-1998 and the age of mother of the appellant was 60 years.

15. In the present case, the alleged incident took place on 20th July, 1986 and

the trial commenced on 24-2-2004 by framing of the charge. In view of this, in my view, the appellant No. 1-Jawahar was a young boy of aged about 19 years at the time of incident and he has been in jail since the day of conviction and has almost undergone imprisonment of about four years. The appellant was teen-aged boy at the time of incident. If he is kept in jail for the period imposed by the Court, after his release from jail, he would be a liability to the family. If he is given an opportunity by reducing the period of imprisonment, he would be able to start his life afresh. Considering all these aspects, maintaining the order of conviction by the trial Court, the order of sentence of imprisonment is required to be modified and the appellant-convict No. 1-Jawahar is ordered to undergo imprisonment of five years for the offence punishable u/s 306 of Indian Penal Code. As regards the other sentences, the order of the trial Court does not require any interference.

16. In view of above, this appeal is partly allowed and judgment and order of conviction of appellant No. 1-Jawahar Meghjibhai is modified and is directed to undergo rigorous imprisonment of five years and to pay fine of Rs. 3,000/- (Rupees Three Thousand Only) in default thereof to undergo further three months" rigorous imprisonment. As regards his conviction and sentence of imprisonment for the offence punishable u/s 498-A of Indian Penal Code is concerned, the same is confirmed. Both the sentences shall run concurrently. As regards the order of conviction and sentence passed against appellant No. 2-Meghjibhai Hemantdas is concerned, the same is set aside. The appellant No. 2-Meghjibhai is on bail and his bail-bond stands discharged. Direct Service is permitted for the Sessions Court as well as Sabarmati Jail.