

(2015) 12 GUJ CK 0036
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1184 of 1993 and 185 of 1994

Jitendrasinh Joravarsinh Bhati

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 498(A), 498-A

Citation : (2015) 12 GUJ CK 0036

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

Bench : Division Bench

Advocate : Kartik V. Pandya, Advocate, for the Appellant; C.M. Shah, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—Heard learned Advocate for the appellant Mr. Kartik V. Pandya and learned Additional Public Prosecutor for the respondent - State Ms. C.M. Shah.

2. By way of this Appeal, the Appellant - original accused has felt aggrieved by the judgment and order of conviction and sentence dated 04.10.1993 of the learned Sessions Judge, Sabarkantha, Himmatnagar in Sessions Case No. 58/1992 whereby the accused herein were sentenced to undergo under Section 498(A) of the Indian Penal Code, rigorous imprisonment of two years and a fine of Rs. 2,000/-, and in default rigorous imprisonment of two years. The accused was acquitted for the offences punishable under Section 302 of the Indian Penal Code.

3. The case in brief and the incident which occurred on 13.04.1992 at 10.15 pm is as stated under:--

"3.1. It is the case of the prosecution that the accused was living with the deceased wife - Pavanba and his two sisters at village Munai and had married

Pavanba about one year prior to the date of the incident. It is alleged that the accused was having doubts on the character of his wife and used to frequently taunt her and thus used to caused mental and physical torture on his wife. On the ill-fated day, the accused is alleged to have poured kerosene on the body of the deceased, lit the matchstick and thus, caused burn injuries to his wife. Since Pavanba has started screaming, it is alleged that the accused raised the volume on the tape recorder to silence the screams of his wife. The sisters of the accused are also alleged to have given physical and mental torture to the deceased. The deceased suffered burn injures on her hands, legs and chest. Pavanba was shifted to the Ahmedabad Civil Hospital and on the basis of wireless message a Janva Jog Entry No. 11/92 was made by the Bhiloda Police Station was made and a Station Diary No. 16/1992 was made on 16.04.1992 at Bhiloda Police Station. Head Constable Amrutbhai - Buckle No. 706 was sent to the Civil Hospital at Ahmedabad for investigation. The deceased had given her dying declaration before the learned Executive Magistrate, Ahmedabad on 16.04.1992.

3.2. The chargesheet was led before the learned Magistrate and the case was committed to the Sessions Court, being Sessions triable case. The accused pleaded not guilty to the charges levelled against them. On completion of the evidence of prosecution, further statement of the accused under Section 313 of the Code of Criminal Procedure were recorded.

3.3. At the time of the trial, the prosecution examined the following witnesses:--

The prosecution also relied upon various documentary evidence, some of them are:--

3.4. At the end of the trial, the learned Sessions Judge passed the above cited judgment and order."

4. Learned Advocate appearing for the appellant - accused Mr. Kartik V. Pandya has stated that there was no evidence to show that the appellant had ever committed cruelty or torture on the deceased. It is further submitted that the evidence of Head Constable Virjibhai Becharbhai ought to have been appreciated who had recorded the statement of the deceased Pavanba wherein there are no allegations made about cruelty. Further, it is submitted that the prosecution has not examined the learned Executive Magistrate who recorded the dying declaration of the deceased. Considering all the above, it is submitted that this is a fit case which requires the interference of this Court in the judgment and order of the learned Sessions Judge, Sabarkantha, Himmatnagar and the accused be acquitted of all the charges.

5. On the other hand, learned Additional Public Prosecutor Ms. C.M. Shah has taken this Court through the judgment and order of the learned Sessions Judge and has submitted that the learned Judge has erred in acquitting the accused of the charges of the murder of his wife. It is further submitted that the learned Judge had erred in discarding the evidence of dying declaration recorded by the learned Executive Magistrate in which the deceased had given all the details

regarding the incident. It is also submitted that the learned Judge ought to have seen that other circumstantial evidence also lends corroboration to the evidence of dying declaration. Further, the learned Judge had erred in discarding the evidence of the learned Executive Magistrate and also the Police Sub-Inspector of Bhiloda Police Station. Considering the above, it is submitted that this is case which requires in charging the accused for the offences punishable under Section 302 of the Indian Penal Code.

6. We have heard learned Advocates appearing for the respective parties and perused the records of the case.

At this stage, it is necessary to reproduce Section 498-A of the Indian Penal Code which reads as under:--

"498-A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

7. Criminal Appeal No. 1184/1993 is preferred by the appellant - accused against the judgment and order of sentence and conviction dated 04.10.1993 passed by the learned Sessions Judge, Sabarkantha, Himmatnagar in Sessions Case No. 58/1992. The incident occurred in the year 1992 and almost 23 years have passed. We are in complete agreement with findings of the learned Sessions Judge and we confirm the judgment and order of the learned Sessions Judge. However, looking to the physical condition of the accused and as he has already suffered a paralytic attack and also considering the time that has elapsed, if a request is made by the appellant - accused for remission, the same be considered by the State, in accordance with law. Hence, this Criminal Appeal is devoid of merits and stands dismissed.

8. Criminal Appeal No. 185/1994 is preferred by the State against the order of acquittal of the accused under Section 302 of the Indian Penal Code. However, in view of the above judgment passed in Criminal Appeal No. 1184/1993, this Appeal would not survive and stands dismissed. Bail and bail bond, if any, stands cancelled. Record and proceedings be sent to the concerned Trial Court forthwith.