

(2015) 12 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 137 of 2010

Mahendrabhai Dahyabhai Sonara

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 306, 498(A)

Citation : (2015) 12 GUJ CK 0031

Hon'ble Judges : Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : Punam G. Gadhvi, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.

1. The present appeal is directed against the impugned judgment and order rendered in Sessions Case No. 29/2007 by the Additional Sessions Judge, Fast Track Court No. 1, Ahmedabad City dated 16th November, 2009 recording acquittal for the offence under Section 306 read with Section 114 of the Indian Penal Code, however, recording conviction of the accused for the offence under Section 498(A) of the Indian Penal Code and imposing sentence as stated in the impugned order.

2. The facts of the case briefly summarized are as follows:

"2.1 The sister of the complainant was married with the appellant-original accused No. 1 and initially she was treated well, however after some time, harassment and ill-treatment was meted out to the deceased-victim and she had returned to the parental house. Thereafter again, there was some settlement and she was persuaded to return to her matrimonial house after the compromise was arrived at. However again, harassment and ill-treatment continued and,

therefore, the deceased-victim committed suicide, for which, FIR being C.R. No. I-412/2006 has been registered with Amraiwadi Police Station for the offences under Sections 306, 498(A) read with Section 114 of the Indian Penal Code.

2.2 After the investigation was over, the chargesheet was filed and as the offence was triable by the Court of Sessions, it was committed to the City Civil & Sessions Court, Ahmedabad.

2.3 Thereafter, the City Civil Judge, Ahmedabad has proceeded with the trial and recorded further statements of the accused under Section 313 of the Criminal Procedure Code.

2.4 After hearing learned APP as well as learned advocate for the defence and on appreciation of the evidence, the City Civil Judge, Ahmedabad recorded the conviction of the accused as stated in the impugned judgment."

3. It is this judgment and order which has been assailed in the present appeal on the ground stated in the memo of appeal inter alia that the Court below has committed an error while appreciating the evidence and recorded conviction erroneously.

4. Heard learned advocate, Shri Punam Gadhvi for the appellant-accused and learned APP Shri H.L. Jani for the respondent-State.

5. Learned advocate, Shri Gadhvi referred to the material and evidence and testimony of witnesses including the complainant, who is brother of the deceased, PW-3, Exh.18 and complaint at Exh.19. He submitted that the Court below has not considered the theory of accident though initially entry is for the accidental death. He further submitted that history recorded by the doctor at the relevant time in the LG Hospital, where the victim was taken by the appellant-husband himself, refers to the accidental death. He also referred to the testimony of the Executive Magistrate, PW-5 and the dying declaration at Exh.27. He pointedly referred to the dying declaration, Exh.27 and submitted that as stated by the Executive Magistrate, she was conscious and the dying declaration, which has been recorded, clearly states that there was no harassment and she got burn injuries while preparing tea. Learned advocate, Shri Gadhvi submitted that the Court below has totally failed to appreciate on this aspect about the accidental injury to the victim. He submitted that if there is a reasonable doubt about the incident, the benefit of doubt should go to the accused. He therefore submitted that theory of incident which is also corroborated by the dying declaration at Exh.27 as well as history recorded by the doctor at LG Hospital in the form of yadi at Exh.15, the case papers at Exh.17, has not been properly appreciated. Learned advocate, Shri Gadhvi also referred to the testimony of Dr. Laxman Taviyad, PW-2, who was serving as RMO at LG Hospital. He also referred to the testimony of Dr. Kaushikkumar Vegada, PW-1 and submitted that he has stated in his testimony that the accused was examined, who was having burn injury and as recorded in the yadi at Exh.12, he received such injury while making an attempt to save the victim. Learned advocate, Shri Gadhvi, therefore, submitted

that the present appeal may be allowed.

6. Learned APP Shri Jani, however, strongly resisted the submissions and submitted that it requires a closer scrutiny. He referred to the reasons recorded by the Court below and submitted that it cannot be said to be erroneous and appreciation of evidence is just and proper. Learned APP Shri Jani submitted that though boggy of accidental death is raised, it is required to be noted that the history has been given to the doctor at LG Hospital by the appellant-husband and, therefore, naturally it would record accidental death. Learned APP Shri Jani, however, submitted that a close scrutiny of the evidence would establish that the history given by the appellant-husband was contrary to other evidence on record and, therefore, it has not been believed or accepted. For that purpose, learned APP Shri Jani referred to the panchnama of scene of offence at Exh.8 and submitted that it was a silent stove and, therefore, it could not have any blast. He submitted that at some places, it is stated that while preparing food, accident has occurred, whereas in dying declaration, it is stated that while preparing tea, accident has occurred. He pointedly referred to the panchnama of scene of offence at Exh.8 and submitted that occurrence is not at the kitchen and even stove is as it is with cork closed on it and even the match stick is also at its place on the side of the wall. He further submitted that if the person has received burn injuries, who tried to run around, which may cause some kind of impact and burn particles were found on the wall or other places, which are not found in the panchnam nor the things are scattered and they are all lying as it is. He therefore submitted that this itself suggests that theory of the accidental death has been delighted by the FSL report as well as panchnama at Exh.8. He also referred to FSL report at Exh.39. Learned APP Shri Jani submitted that the Court below has recorded acquittal for the offence under Section 306 of the Indian Penal Code but conviction has been recorded for the offence under Section 498(A) of the Indian Penal Code regarding the harassment and cruelty. He referred to the provisions of Section 498(A) of the Indian Penal Code and submitted that explanation clearly provides that if the harassment or cruelty is caused, which drives a woman to commit suicide, the offence is made out. Learned APP Shri Jani submitted that merely because the span of marriage life is more than seven years by itself would not be a ground to discard the charges for the offence under Section 498(A) of the Indian Penal Code. He submitted that the presumption may not be made but after the accidental death, the offence with regard to the harassment and cruelty are made out and, hence, the conviction could be recorded as recorded by the Court below. He therefore submitted that the impugned judgment and order may be confirmed and the present appeal may not be entertained or allowed.

7. In view of these rival submissions, it is required to be considered whether the present appeal deserves consideration.

8. As could be seen from the appreciation of evidence and the material and evidence, which has been referred to by both sides at length that initially it was a

case of accidental death, which was sought to be made out. The appellant-original accused No. 1-husband had taken victim to the LG Hospital and, therefore, the history given by him regarding accidental death has been recorded by the doctor at the relevant time. It is required to be noted that even dying declaration has been recorded by the Executive Magistrate before the complainant-brother and his family members could arrive. It is in this background, the testimony of the complainant-brother at Exh.19 is required to be considered. The complainant-brother in his testimony at Exh.18 has clearly refers to the matrimonial dispute and the harassment throughout these years. It reveals that once he had to return to the parental house and after the compromise, she was sent back with some hope that things will improve. However when it continued, the complainant-brother in his testimony at Exh.18 has clearly stated that the victim had stated to him also about her wish to commit suicide as harassment was continued and she was fed up with the persistent harassment. It is in this background, the Court below has appreciated the evidence. The testimony of other witnesses have corroborated and the submissions about the harassment or cruelty are required to be considered with reference to the provisions of Section 498(A) of the Indian Penal Code. The explanation to Section 498(A) clearly provide that harassment amounting to cruelty should be of such a nature and when it was beyond the tolerance capacity, the victim had also conveyed to the complainant-brother and ultimately had to take such steps. Therefore, it is such consistent conduct of the appellant which led the deceased to commit suicide.

9. The submission made by learned advocate, Shri Gadhvi that harassment must be of such a gravity that it would amount to cruelty under Section 498(A) of the Indian Penal Code is not made out by general allegations, cannot be believed or accepted. It is difficult to have any straitjacket formula for the harassment or the cruelty as it may have to be considered with reference to various factors like strata or social background of both victim and in-laws, atmosphere at the matrimonial house, level of tolerance or sensitivity of the victim.

10. Therefore it appears that the circumstances were so created leaving no option for the victim to commit suicide. It cannot be overlooked that the victim on one hand had stated to the brother, who tried to pacify her but sent her back to the matrimonial house on compromise and on the other hand, there was no improvement and the harassment persisted at the matrimonial house. This created a situation of suffocation which also conveyed to the brother and, thereafter, the deceased-victim took extreme steps of suicide. The submissions, which have been made referring to the aspect of cruelty also therefore cannot be believed or accepted readily.

11. Therefore the reasons recorded for the findings and conclusion arrived at by the Court below does not call for any interference recording conviction of the appellant-original accused No. 1 for the offence under Section 498(A) of the Indian Penal Code imposing sentence as recorded in the impugned judgment and

order.

12. The present appeal, therefore, deserves to be dismissed and accordingly stands dismissed. The impugned judgment and order rendered in Sessions Case No. 29/2007 by the Additional Sessions Judge, Fast Track Court No. 1, Ahmedabad City dated 16th November, 2009 recording conviction of the appellant-original accused No. 1 for the offence under Section 498(A) of the Indian Penal Code is hereby confirmed. The appellant-accused is on bail and, hence, his bail bond stands cancelled and he is directed to surrender to the jail authority.

After the judgment was dictated, learned advocate, Shri Gadhvi requested for time to surrender to the jail authority, which is granted for four weeks as prayed for.