

(2010) 10 GUJ CK 0086
In the Gujarat High Court
Case No : Criminal Appeal No. 1447 of 2008

Mehbubmiya @ Mehmudmiya Hasumiya Malek (Shaikh)	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2010) 10 GUJ CK 0086

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Hemal A. Dave, for the Appellant; H.H. Parikh, Ld. APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present Appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 31.8.2007 passed by the learned Addl. Sessions Judge, 2nd FTC, Nadiad in Sessions Case No. 30/2007, whereby, the learned Judge has convicted the Appellant u/s 306 of IPC and sentenced to undergo R/I for 7 years and to pay a fine of Rs. 100/-, in default, to undergo further S/I for 7 days. The Appellant is also convicted u/s 498-A of IPC and sentenced to undergo R/I for a period of 3 years and to pay a fine of Rs 100/-, in default, to undergo S/I for 7 days, which is impugned in this appeal.

2. The brief facts of the prosecution case is as under:

3. It is the case of the prosecution that Rashida @ Shabana daughter of the complainant had married with the Appellant on 4.5.2006. Thereafter, initially, she was given a good treatment but after some time, Rashida was complaining about ill-treatment by the Appellant. It is the case of the prosecution that the Appellant was demanding Rs. 20,000/-. The complainant could not fulfill the demand of the Appellant, she was subjected to ill-treatment by the Appellant. It is further the case of the prosecution that the Appellant had illicit relation with Mutaz @ Munni

@ Rekha @ Jyotsna, who is the accused No. 2. It is further the case of the prosecution that because of the harassment, Rashida committed suicide on 25.11.2006 by hanging.

4. Therefore a complaint came to be filed by the complainant. The panchnama of the clothes put on by the deceased Rashida was prepared in the presence of panch witness and statements of other witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Nadiad. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was given number as Sessions Case No. 30/2007.

5. Thereafter, the charge was framed at Ex. 6 against the Appellant. The Appellant - accused has pleaded not guilty and claimed to be tried.

6. In order to bring the home the charge levelled against the Appellant - accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

7. Thereafter, after examining the witnesses, further statement of the Appellant-accused u/s 313 of Code of Criminal Procedure was recorded in which the Appellant-accused has denied the case of the prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Judge vide impugned judgment and order dated 31.8.2007 held the Appellant - accused guilty to the charge levelled against him u/s 306 and 498-A of IPC and convicted and sentenced the Appellant accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, 2nd FTC, Nadiad, the present Appellant has preferred this appeal.

10. Heard Mr. I.M. Pandya learned advocate for the Appellant and Mr. H.H. Parikh learned APP for the Respondent-State.

11. Mr. Pandya learned advocate for the Appellant has submitted that the impugned judgment and order of conviction and sentence passed by the learned Judge is bad in the eye of law and not proper and the learned Judge has committed a grave error and, therefore, the impugned judgment and order of conviction and sentence requires to be quashed and set aside. It is further submitted by Mr. Pandya that so far as ingredients of Section 498-A of IPC is concerned, specific evidence is required to be produced on record by prosecution. He has further contended that the witnesses are relatives and no independent witnesses are examined. He has further contended that main ingredients of Section 498-A of IPC are not proved, yet the learned Judge has convicted and sentenced the Appellant. He has further submitted that looking to the main ingredients of Section 306 of IPC is concerned, the main issue in connection of the said offence is provoker, abettor and instigator. He has read the further

evidence of the witnesses and argued that the role of the present Appellant is not established by the prosecution beyond reasonable doubt. Even the prosecution has failed to prove that the deceased was mentally and physically tortured by the Appellant. He has read the oral evidence of I.O. and argued that investigation was not fair but it was bias in nature, yet, he has made a prayer to this Court that he is not arguing the matter on merits but is arguing the matter simply on the point of quantum of punishment.

12. Mr. H.H. Parikh learned APP has produced the Jail remarks on record and submitted that the Appellant has undergone the sentence of 3 years, 9 months and 10 days. He has also read the charge as well as oral evidence of the witnesses and argued that no doubt, the learned advocate has argued this matter only on the point of quantum of punishment, but looking to the allegations made against the present Appellant, and the fact that the offence is against the woman and therefore, no lenient view can be taken in this matter. However, the learned APP Mr. Parikh has failed to convince this Court whether the Appellant is a hard-core criminal or not and has submitted that the Appellant is a husband of deceased.

13. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the Appellant. No doubt, this case is against the woman, but when the present Appellant has undergone more than half of the sentence and learned advocate for the Appellant has only argued the matter on the point of quantum of sentence, then it is required to be observed that the Appellant is not a hard-core criminal but is one of the family member of the family and just due to some quarrel in the family, the offence has taken place. In that view of the matter, I am of the opinion that the request made by learned advocate for the Appellant requires consideration in the interest of justice.

14. In the result, this appeal is partly allowed. The impugned judgment and order of conviction dated 31.8.2007 passed by the learned Addl. Sessions Judge, 2nd FTC, Nadiad in Sessions Case No. 30/2007, convicting the Appellant for the offence u/s 498-A and 306 of IPC, is hereby confirmed. However, the order of sentence sentencing the Appellant to undergo R/I for 7 years for the aforesaid offence u/s 306 of IPC, is hereby reduced to the extent that instead the Appellant is hereby sentenced to undergo the period of sentence already undergone. Rest of the impugned judgment and order is confirmed. The Appellant is ordered to be set at liberty forthwith, if he is not required in any other case. Bail bond stands cancelled. R & P to be sent back to the trial court forthwith.