

(2009) 06 GUJ CK 0036
In the Gujarat High Court
Case No : Criminal Appeal No. 1232 of 2003

Patel Sanjaykumar Ramabhai	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 374(2)
Penal Code, 1860 (IPC) — Section 114, 302, 306, 498C

Citation : (2009) 06 GUJ CK 0036

Hon'ble Judges : H.B. Antani, J; D.H. Waghela, J

Bench : Division Bench

Advocate : M.C. Barot, for the Appellant; Chetna Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

H.B. Antani, J.—The present appeal, preferred u/s 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short), is directed against judgment and order dated 14.08.2003 passed by learned Additional Sessions Judge, F.T.C., Patan in Sessions Case No. 27 of 2003 by which, the learned Judge convicted the appellant for the offence punishable u/s 498(C) of IPC and sentenced rigorous imprisonment for two years and fine of Rs. 500/-, in default, simple imprisonment for three months and u/s 302 of IPC to life imprisonment and fine of Rs. 1,000/-, in default, simple imprisonment for six months. Original accused No. 2 - mother-in-law of the deceased was acquitted by the learned Additional Sessions Judge, Patan. The learned Judge has observed in the order that both the sentences awarded to the appellant shall run concurrently.

2. The short facts giving rise to the present appeal are as under.

3. The complaint was given by deceased-Manishaben narrating mental and physical torture committed by the appellant. She has stated in the complaint that incident took place on 06.11.2002 at about 6:00 hrs. in the morning. The husband of Manishaben, at the instance of his mother, poured kerosene on

Manishaben and set her ablaze. Manishaben started shouting for help and some persons had gathered from the neighbourhood. Thereafter, she was taken to Chanasma Hospital and subsequently to K.B. General Hospital. On the strength of the complaint given by Manishaben, the place, where the incident took place, was visited by the investigating officer. Panchnama of the place of incident was prepared in the presence of panch witnesses. Manishaben was sent to the hospital for immediate treatment. Her dying declaration was recorded in the hospital. The appellant and his mother were arrested during the investigation. On death of Manishaben, inquest panchnama was prepared in the presence of panch witnesses. Panchnama of the clothes put on by the deceased was prepared. The muddamal, which was recovered, was sent to F.S.L. for the purpose of detailed analysis. On receipt of P.M. report as well as F.S.L. report, the appellant was chargesheeted for the offence punishable under Sections 498(C) and 302 of IPC read with Section 114 of IPC. The appellant was produced before the learned Judicial Magistrate First Class who, in turn, made over the case u/s 209 to the Sessions Court, as the case was exclusively triable by the Sessions Court. The charge against the appellant and his mother was framed by learned Additional Sessions Judge, F.T.C., Patan vide Exh.4 and the appellant pleaded not guilty to the charge levelled against him.

4. In view of the aforesaid facts and circumstances, the matter was set down for full-fledged trial before learned Additional Sessions Judge, F.T.C., Patan.

5. The prosecution has examined following witnesses in order to prove guilt of the appellant.

Names	Exhs.		Sr.	No.	PW
1.	1	Dr.Chamanlal Tarachand Maheshwari.			11
Pravinkumar		Ishwarlal	2.	2	Patel
					19
Dhaniben		Manilal Patel	3.	3	
					21
Pushpaben		Jayeshbhai Patel	4.	4	
					23
Maheshkumar		Ranchoddas	5.	5	
					24
Ishwarbhai		Purshottambhai	6.	6	
					25
Amratbhai		Kanjidas	7.	7	Patel
					27
Pravinpuri		Chamanpuri Goswami	8.	8	
					28
Manoharbhai		Sitaram Nigde	9.	9	
					33
			10.	10	

Jagannath	Ramlakhan	Parekh	39
-----	-----	-----	11. 11
Dr.Harshadrai	Natwarlal	Parmar	53
-----	-----	-----	12. 12
Rameshbhai	Nanabhai	Patel	55
-----	-----	-----	

6. The prosecution has also produced following documentary evidence in order to establish the involvement of the appellant in the commission of offence.

-----	Sr.	No.
Documents		Exhs.
-----	1.	Certificate
of treatment issued to Manishaben		12
-----	2.	Complaint
given by Manishaben		13
-----	3.	Yadi which
was sent for recording dying	14	declaration
-----	4.	Yadi which
was sent for autopsy of dead body		15
-----	5.	P.M. note
16 -----	6.	
Certificate with regard to cause of death		17
-----	7.	Inquest
panchnama		20
-----	8.	
Panchnama with regard to seizure of clothes		22
-----	9.	
Panchnama of the scene of offence		26
-----	10.	Biological
report of F.S.L.		47
-----	11.	Report of
F.S.L. 49 -----		

7. At the conclusion of trial, further statement of the appellant was recorded u/s 313 of the Code and the appellant submitted that he was an innocent person and was falsely implicated in the commission of offence punishable under Sections 498(C) and 302 of IPC.

8. The learned Additional Sessions Judge has, on the basis of the evidence on record of the case, came to the conclusion that incident in question took place on 06.11.2002. Appellant, the husband of deceased-Manishaben and original accused No. 2, the mother-in-law of Manishaben, used to inflict mental and physical torture on Manishaben. On 06.11.2002 at about 6:00 hrs. in the morning, the appellant poured kerosene on the deceased at the instance of his mother and set her on fire. It is held by learned Judge that the prosecution, on the strength of the oral depositions and the documentary evidence, more

particularly, the complaint given by Manishaben and her dying declaration vide Exh.13, established the involvement of the appellant in the commission of offence punishable under Sections 498(C) and 302 of IPC. However, learned Judge held that the involvement of original accused No. 2 was not established by the prosecution and, therefore, he acquitted original accused No. 2 and convicted the present appellant for the offence punishable under Sections 498(C) and 302 of IPC. The learned Judge held that prosecution has adduced cogent, convincing and conclusive evidence to indicate the involvement of the appellant in the commission of offence. The documentary evidence such as dying declaration vide Exh.13, medical certificate issued to Manishaben and P.M. note as well as F.S.L. report provide further corroboration to the prosecution case showing the involvement of the appellant in the commission of offence. Thus, it is held by the learned Judge that the prosecution has established the entire link connecting the appellant with the commission of offence and as there was no lacuna in the evidence adduced by the prosecution, the learned Judge convicted the appellant for the offence punishable under Sections 498(C) and 302 of IPC.

9. Learned advocate Mr.M.C. Barot, representing the appellant, submitted that the learned Judge has not appreciated the entire gamut of oral deposition and documentary evidence in its true perspective while convicting the appellant for the offence punishable under Sections 498(C) and 302 of IPC. The learned advocate submitted that on bare perusal of the deposition adduced by Pravinkumar vide Exh.19, the case against the appellant for the offence punishable u/s 302 has not been conclusively established by the prosecution and, at the most, learned Judge ought to have convicted the appellant u/s 306 of IPC and not u/s 302 of IPC. The learned Judge ought to have taken into consideration the ratio laid down by the Hon''ble Apex Court in case of Narain Singh and Anr. v. State of Haryana reported in (2004) 13 SCC 264 as well as in case of Godhu and Another Vs. State of Rajasthan, and convicted the appellant for the offence punishable u/s 306 of IPC instead of Section 302 of IPC. Thus, it is submitted by the learned advocate for the appellant that the prosecution has not conclusively established the entire link connecting the appellant with the commission of offence and even if, it is held that the prosecution has proved the involvement of the appellant in the commission of offence, then the appellant could have been convicted for the offence punishable under Sections 498(C) and 306 of IPC.

10. Learned A.P.P. Ms.Chetna Shah, representing respondent-State, placed heavy reliance on the reasonings given by the learned Additional Sessions Judge, Patan in support of the submission that the learned Judge has considered the entire gamut of oral deposition and documentary evidence in order to bring home the guilt against the appellant. Learned A.P.P. submitted that the learned Judge has rightly held that the prosecution has established the entire chain connecting the appellant with the commission of offence. The documentary evidence which is adduced by the prosecution provides necessary corroboration indicating the involvement of the appellant in the commission of offence. Thus, on perusal of the entire evidence on record of the case, learned A.P.P. submitted that no

infirmity is found in the reasonings given by the learned Judge and the judgment and conviction recorded against the appellant is required to be upheld and the appeal deserves to be dismissed.

11. We have heard learned advocate Mr.Barot for the appellant and learned A.P.P. Ms.Chetna Shah for the respondent-State at length and in great detail. We have also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record of the case with reference to broad and reasonable probabilities of the case.

12. We have reappreciated and reevaluated the oral deposition as well as the documentary evidence adduced by the prosecution. We have also carefully perused the reasonings assigned by the learned Additional Sessions Judge while convicting the appellant for the offence punishable under Sections 498(C) and 302 of IPC. The prosecution has examined 12 witnesses with a view to prove inextricable involvement of the appellant in the commission of offence. Depositions adduced by PW-2-Pravinbhai Patel vide Exh.19, PW-3-Dhaniben Manilal Patel vide Exh.21, PW-4-Pushpaben vide Exh.23 and PW-5 - Maheshkumar vide Exh.24 clearly indicated the involvement of the appellant in the commission of offence. The appellant, along with his mother, used to inflict mental and physical torture on deceased - Manishaben. On the date of incident, i.e. 06.11.2002 at about 6:00 am. in the morning, the appellant, at the instance of his mother, poured kerosene on Manishaben and, thereafter, set her ablaze. The deceased gave complaint vide Exh.13 on 06.11.2002 wherein, she has narrated in an exhaustive manner as to how mental and physical torture was inflicted by the appellant and his mother on her and the manner in which kerosene was poured on her with a view to set her ablaze. The depositions adduced by Dr.Chamanlal - PW-1 vide Exh.11 and PW-11-Dr.Harshadrai at Exh.53 further corroborate the prosecution story with regard to involvement of the appellant in the commission of offence. The learned Judge has, while awarding the sentence, exhaustively discussed oral deposition as well as the documentary evidence on which the prosecution has placed reliance. The learned Judge has also observed the demeanor of witnesses during the course of examination in chief and cross-examination. We are in general agreement with the reasoning given by the learned Judge and we do not see any reason to interfere with the findings given by the learned Judge as the reasoning given by the learned Judge, in our considered view, is unassailable. In the alternative, it has been strenuously contended by the learned advocate Mr.Barot that the appellant ought to have been convicted for the offence punishable u/s 306 of IPC and not u/s 302 of IPC, but that argument, considering the overwhelming evidence against the appellant, in our view, does not hold water.

13. For the foregoing reasons, the appeal is hereby dismissed. We confirm judgment dated 14.08.2003 passed by learned Additional Sessions Judge, F.T.C., Patan in Sessions Case No. 27 of 2003 awarding the sentence under Sections 302 and 498(C) of IPC. Muddamal articles are to be disposed of in terms of the

directions given by the learned Judge in the judgment impugned in the appeal.