

(2015) 12 GUJ CK 0020

In the Gujarat High Court

Case No : Criminal Appeal Nos. 1541 of 2011 and 1584 of 2012

Pintubhai Chandubhai Harijan and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 107, 114, 306, 489(A), 498(A)

Citation : (2015) 12 GUJ CK 0020

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

Bench : Single Bench

Advocate : Vijal P. Desai, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—Criminal Appeal No. 1541/2011 is filed by the appellants-original accused against the judgment and order rendered in Sessions Case No. 25/2011 by the Principal Sessions Judge, Dahod dated 24.11.2011 recording conviction of the appellants herein - accused persons for the offence under Sections 306 , 498(A) and 114 of the Indian Penal Code and imposing sentence as stated in detail in the impugned judgment and order.

2. Criminal Appeal No. 1584/2012 has been filed by the appellant-original complainant for enhancement of the sentence imposed upon the respondent Nos. 2 to 5 therein i.e. the original accused persons vide the judgment and order rendered in Sessions Case No. 25/2011 by the Principal Sessions Judge, Dahod dated 24.11.2011.

3. The facts of the case briefly summarized are that:--

"3.1 The deceased-daughter of the complainant was married to the appellant-original accused No. 1 and they were residing with all the accused at Village : Keliya. However it is the case of the prosecution that due to some remarks about character of the deceased doubting her character and taunting her for the same,

led to the suicide by the deceased. It is therefore alleged that it amounted physical and mental cruelty which led to her to commit suicide, for which, charges as stated above for the offences under Sections 306 , 498(A) and 114 of the Indian Penal Code were made in the FIR being C.R. No. I-23/2010 registered with Devgadhbariya Police Station.

3.2 After the investigation was over, the chargesheet for the alleged offences came to be filed and as the offence was triable by the Court of Sessions, it was committed to the Court of Sessions, Dahod.

3.3 Thereafter, the learned Sessions Judge framed the charges and proceeded with the trial.

3.4 In order to bring home the charges leveled against them, the prosecution examined witnesses and also produced documentary evidence as mentioned in the impugned order.

3.5 After recording of the evidence of the prosecution witnesses was over, the learned Sessions Judge recorded further statements of the accused under Section 313 of the Code of Criminal Procedure, 1973.

3.6 After hearing learned APP as well as learned advocates for the defence, the learned Sessions Judge passed impugned judgment and order recording conviction as stated therein."

4. It is this judgment and order which has been assailed by the appellants-accused in the present appeal inter alia that the Court below has committed an error in appreciating the evidence on record and thereby convicting the accused persons. It is contended that the learned Sessions Judge has failed to appreciate the material and evidence on record in proper perspective and, therefore, the impugned judgment and order may be quashed and set aside.

5. Heard learned advocate, Shri Viral Shah for the appellants-accused, learned APP Shri H.L. Jani for the State and learned advocate, Shri Oza for the original complainant.

6. Learned advocate, Shri Viral Shah submitted that the appellant-original accused No. 1 (husband) has served the sentence and, therefore, the present appeal would be more focus qua remaining appellants i.e. original accused Nos. 2 to 4. He referred to the testimony of witnesses to support his submission that the Court below has committed an error in appreciation of evidence while recording conviction of the appellants-accused Nos. 2 to 4. He submitted that the charges for the offence under Section 306 of the IP Code, which would required instigation, would be attracted qua them. He submitted that before the charges for the offence under Section 306 of the IP Code could be attracted or proved, mens rea and active participation sine qua non. He submitted that the appellant No. 2-father-in-law has divorced his wife, the appellant No. 3 in 1998 and maternal uncle is also residing at a different place. He submitted that in fact, the appellant No. 2, father-in-law, is employed with Karamsad Nagarpalika and he

has been working as Peon, for which, documentary evidence were also placed on record, which has not been appreciated. He therefore referred to the reasons recorded in the impugned judgment on this aspect. He emphasized that though there is sufficient material, same has not been believed without any justification and, therefore to that extent, the judgment and order recording conviction of the appellant Nos. 2 to 4 may be quashed and set aside. He submitted that the findings given qua accused Nos. 2 to 4 are contrary to the material and evidence on record as there could not be any instigation, which would attract the offence under Section 306 of the IP Code and also under Section 489(A) of the IP Code. He submitted that as there is no abetment, the conviction recorded by the Court below is erroneous as could be seen from the reasons recorded for such conviction.

7. Learned advocate, Shri Oza for the original complainant referred to the grounds stated in the appeal for enhancement as well as appreciation of material and evidence. Learned advocate, Shri Oza submitted that the casting aspersion on the character would be more touching and humiliating and, therefore, the deceased has committed suicide. He emphasized that the span of marriage life is less than only 2-4 months and during this short span also, aspersion have been made, for which, she has been taunted and abused, which has led her to commit suicide. Learned advocate, Shri Oza referred to the provisions of Section 306 of the IP Code and submitted that though mens rea is essential, it has to be gathered from the circumstances and evidence. He submitted that it is mental process, by which, a person would feel humiliated due to circumstances, which are created and, therefore, the Court has to examine same with sensitivity. He therefore submitted that though the appellant No. 1-husband may have served the sentence as imposed, he would press for enhancement of the sentence qua the appellant No. 1 also. He submitted that the appellant Nos. 2 to 4 have been released on bail at the stage of trial also and, therefore, they have not undergone sentence much and, therefore, they have not even served the sentence as imposed by the impugned judgment and order. Learned advocate, Shri Oza therefore submitted that the impugned judgment and order recording conviction may not be disturbed and his appeal qua enhancement may be considered in the circumstances as well as the manner in which the harassment is caused.

8. Learned APP Shri Jani submitted that the appellant No. 1 has undergone the sentenced, however, the appellants-accused Nos. 2 to 4 have not served the sentence and they have been on bail even during trial. Learned APP submitted that considering short span of marriage life and the allegations of aspersion with regard to the character culminating into suicide, could be considered for the purpose of offence. He therefore submitted that the conviction recorded is just and proper and impugned judgment may not be disturbed. He submitted that apart from the enhancement, at least conviction could be maintained as it is and same may not be disturbed.

9. In view of these rival submissions and having considered the material and evidence, it is required to be considered whether Criminal Appeal No. 1541/2011 against conviction deserves consideration or whether the judgment and order of conviction and sentence could be sustained or whether Criminal Appeal No. 1584/2011 for enhancement of the sentence also could be considered.

10. As it transpires, the appellant No. 1-original accused No. 1 (husband) has served the sentence imposed by the Court below by the impugned judgment. Therefore apart from the aspect of enhancement, it can be considered separately. The focus would be on the aspect of the conviction recorded by the Court below qua the appellants-accused Nos. 2 to 4.

11. As could be seen from the judgment and order, the reasons, which have been recorded, do not specifically refer to the particular incidents or the nature of abetment by them. It is required to be mentioned that though the appellant Nos. 2 to 4 are staying separately, same has not been believed or accepted without any proper deliberation or discussion with regard to the evidence. The Court below has therefore totally overlooked or rather misdirected on this aspect while appreciating the evidence. The appellant No. 2 has been serving at Karamsad Nagarpalika and has been staying separately. The appellant No. 3, wife of the appellant No. 2 (mother-in-law) has been divorced and though there is discussion in the judgment with regard to their matrimonial disputes, the observations have been made that the appellant No. 3 is still residing with the appellant No. 2, which is contrary to the evidence on record. Further the appellant No. 4, maternal uncle, is also residing separately. Therefore on one hand, there is no specific details except the allegations that the deceased was abused qua the character, there are no incidents and when they are residing separately, there is no material and evidence particularly when they are residing separately. Further, there cannot be a constant harassment amounting to cruelty, which would drive a woman to commit suicide leaving no option for her. The Hon"ble Apex Court has considered this aspect in a judgment in case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, and has made observation,

"The word "suicide" in itself is nowhere defined in Indian Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself." The provision of abetment is defined in Section 107 of the Indian Penal Code. The ingredients are required to be established. The Hon"ble Apex Court in this judgment has observed that "This Court in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi) had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self respect. Therefore, it

is impossible to lay down nay straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances."

12. Therefore before the offence under Section 306 of the IP Code could be attracted, mens rea or active role by the accused is required to be established. As discussed hereinabove, active participation or role qua appellant Nos. 2 to 4 has not been appreciated and discussed in the impugned judgment and order. In fact, there is hardly any discussion on this aspect. Therefore, the offence under Sections 306 and 498(A) of the IP Code qua appellant Nos. 2 to 4 cannot be said to have been established. Further as they have been residing separately assuming that there were some abuses some times, fact remains that the victim would have sufficient time to cool down and balance her. It is required to be mentioned that the appellant-accused No. 1 has been convicted and has served the sentence and, therefore, this Court also does not refer to in detail about the conviction for the offence qua the appellant-original accused No. 1.

13. It is in these circumstances, the impugned judgment and order recording conviction of the appellant-accused Nos. 2 to 4 cannot be sustained and the impugned judgment and order of conviction and sentence deserves to be quashed and set aside.

14. In view of the discussion made hereinabove, when the conviction when the conviction qua original accused Nos. 2 to 4 has been quashed and set aside, the issue with regard to the enhancement of the sentence as contended by learned advocate, Shri Oza cannot be accepted. Further, the submissions have been made by learned advocate, Shri Oza with regard to the enhancement of the sentence qua appellant-accused No. 1 (husband) emphasizing that merely because he has served the sentence imposed upon him, cannot be a ground for not considering the enhancement, require to be appreciated. It is required to be mentioned that the aspect of sentence or enhancement of the sentence imposed by the Court below would attract the doctrine of proportionality. On appreciation of material and evidence, it cannot be said that the sentence imposed by the Court below is unjust and/or harsh. Normally the appellate court would not disturb the sentence if it is imposed in a reasonable manner considering relevant aspects like gravity of the offence, overall circumstances on appreciation of material and evidence as well as role of the accused.

15. The doctrine of proportionality in sentence would also require that the sentence has to be proportionate to the gravity of the offence and it has to be balanced considering overall circumstances. Therefore overall appreciation of material and evidence and circumstances, it does not call for any enhancement of the sentence qua the appellant-accused No. 1. Though the submission has been made that merely because the appellant-accused No. 1 has served the sentence itself may not be a ground while considering the enhancement. In fact, the Court has to consider the proportionality and the reasonableness of the sentence imposed by the Court below and even while maintaining the conviction, if the sentence is just and reasonable, it does not call for any modification or

enhancement depending upon the facts of the case. Therefore as stated above, the conviction of the original accused Nos. 2 to 4 has been set aside and when the appellant-accused No. 1 has served the sentence, the appeal filed for enhancement of the sentence cannot be entertained and deserves to be dismissed.

16. In the circumstances, Criminal Appeal No. 1541/2011 filed against the conviction is partly allowed. The impugned judgment and order rendered in Sessions Case No. 25/2011 by the Principal Sessions Judge, Dahod dated 24.11.2011 is hereby quashed and set aside qua appellants-original accused Nos. 2 to 4 and the impugned judgment and order qua appellant-original accused No. 1 is not disturbed and stands confirmed. Therefore, the appellants-accused are ordered to be set at liberty forthwith, if not required in any other offence. They are on bail and, hence, their bail bonds stand cancelled.

17. Therefore as a necessary corollary, Criminal Appeal No. 1584/2012 filed for enhancement of the sentence by the original complainant deserves to be dismissed and accordingly stands dismissed.