

(2013) 09 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 720 of 2007

Raghnathbhai Premabhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)

Evidence Act, 1872 — Section 106, 11

Penal Code, 1860 (IPC) — Section 201, 302, 306, 498A, 498A

Citation : (2013) 09 GUJ CK 0031

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Pratik B. Barot,s No. 1 and Mr. Tushar Chaudhary, for the Appellant;
C.M. Shah, APP for Respondent(s) No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.—The appellant-ori. Accused has preferred this appeal under sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 30.3.2007 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa, Banaskantha in Sessions Case No. 19/2003, whereby, the learned trial Judge has convicted the appellant for the offence under sec. 302 of IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs. 5000/-, in default, to further undergo S/I for two months. The appellant is also convicted for the offence u/s 201 of IPC and sentenced to undergo S/I for ten years and to pay a fine of Rs. 500/-, in default, to undergo further S/I for one month, which is impugned in this appeal. The case of the prosecution is that on 23.11.2002, the complainant was at his field known as "Lavarawala" with his father and younger brother. At that time, Jesungbhai Bhembhai Patel of village Vinchhivadi, who is also cousin brother of accused, had came there on tractor and told the complainant and his father that his sister Parvatiben had died due to burns injuries in the field. Therefore, the complainant, his father and other family members went to Vinchhivadi village

where they saw dead-body of Parvatiben lying in the field, and therefore, the aforesaid complaint was lodged against the accused-present appellant.

1.1 The appellants accused came to be arraigned for committing murder. On the basis of the FIR given by the complainant - brother of the deceased immediately after the incident. The prosecution was put into motion and the charge-sheet was laid u/s 302 along with sec. 201 of IPC. The case being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, and thereafter the same was made over to the learned Addl. Sessions Judge, having his camp at Deesa, which was given number as Sessions Case No. 19/2003. The learned Addl. Sessions Judge, at Deesa, on 31.3.2004 was requested to reframe the charge as per the order dated 3.3.2004 passed by this Court in Criminal Revision Application No. 438 of 2003, and that is how, the charge dated 2.4.2004 came to be framed by the learned Addl. Sessions Judge, Deesa. The learned Addl. Sessions Judge, Deesa after passing the order below Ex. 33 framed the charge, but the same was challenged, as discussed earlier, and therefore, the learned Addl. Sessions Judge, Deesa, reframed the charge below Exh. 58 and added the provisions of Sec. 498A and sec. 306 of IPC.

1.2 Thereafter, the Sessions Court framed the charge as aforesaid against the appellant for commission of the offence u/s 302, 201, 498A and under sec. 306 of IPC. The appellant-accused has pleaded not guilty and claimed to be tried.

1.3 To prove the case against the present appellant, the prosecution has examined the following witnesses whose evidence is read before this Court by the learned advocate for the appellant:

1. PW-1 Ishwarbhai Hamirabhai Patel Ex. 73
2. PW-2 Shamalabhai Vahtabhai Patel Ex. 77
3. PW-3 Sonaben w/o Hamirbhai Patel
4. PW-4 Hamirabhai Trikmabhai Patel Ex. 79
5. PW-5 Mahadanji Chamnaji Gadhavi Ex. 81
6. PW-6 Dr. Shitalben Sudhirbhai Shah Ex. 84
7. PW-7 Chandandan Sujaji Gadhavi Ex. 92
8. PW-8 Kasamkhan Fatuji Chauhan Ex. 95
9. PW-9 Vishnubhai Ishwarbhai Patel Ex. 100

1.4 The prosecution also relied upon the following documentary evidences so as to bring home the charges against the appellants-accused.

1. Complaint Ex. 74
2. Map of scene of offence Ex. 80

3. Yadi to Medical Officer, Dhanera Ex. 85
4. PM Note Ex. 86
5. Medical Certificate Ex. 87
6. PM Note Ex. 89
7. Note of Medical Officer Ex. 90
8. Inquest Panchnama Ex. 93
9. Panchnama of scene of offence Ex. 94
10. Report to PSO Ex.96
11. Index of CR No. I-94/02 of Dhanera Police Station Ex. 97
12. Index Ex. 98
13. Yadi for inquest Ex. 99
14. Announcement of incident by complainant Ex.101
15. Death Form Ex. 102
16. Report to PSO Ex. 103
17. Yadi for map of scene of offence place Ex. 104
18. Yadi to FSL Ex. 105
19. FSL Report Ex. 106
20. Letter of FSL Ex.107
21. FSL Report Ex. 108

2. Thereafter, after examining the witnesses, further statement of the appellant-accused under sec. 313 of CrPC was recorded in which the appellant-accused has denied the case of the prosecution.

3. After considering the oral as well as documentary evidence and after hearing the learned advocates for the parties, the learned trial Judge vide impugned judgment and order dated 30.3.2007 held the present appellant-original accused guilty of the charge levelled against him under sec. 302 and 201 of IPC, convicted and sentenced the appellant-accused, as stated above.

4. We have heard at length learned Advocate Mr. Pratik Barot for appellant, Mr. Tushar Chaudhary learned advocate for the original complainant and Ms C.M. Shah learned APP for the respondent-State.

5. The learned counsel for the present appellant has contended that the trial court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper

perspective, and hence, the present appellants deserve to be given the benefit of doubt and be acquitted.

6. On the other hand, learned APP has strongly opposed the contentions raised by the learned advocate for the present appellants and has submitted that the trial court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it and hence, no interference is called for and the appeals deserve to be dismissed.

7. We have gone through the oral as well as documentary evidence produced on record and considered the rival submissions made by the learned advocates appearing for the parties. We have as per the latest decision of the Apex Court, appreciate and re-appreciate the said evidence as the same is read over to us. We have even gone through the important documents, more so, the inquest panchnama, the FSL report and the Postmortem note of the deceased. It would be relevant to first discuss the points which were an issue before the learned trial Judge and the learned trial Judge, in his well reasoned order has held that the offence u/s 302 read with section 201 of IPC is made out against the accused, however, he has been acquitted the accused of the charge u/s 498-A and 306 of IPC. On the touch-stone of the principle laid down by the Apex Court, it would be necessary for this Court to first go through the evidence of doctor supported by the postmortem report and the cause of death. The cause of death is shock due to the burns. In Col. No. 17 of the postmortem note, the following injuries are mentioned:

1. Abrasion of 4cm x 1cm on right upper part of buttock.
2. CLW of 1cm x 1/2 cm on right side of nose.
3. Whole body burnt of upper 1/3 part of buttock only.
4. 4-5 blister at right upper part thigh -on puncturing contain CLW, and
5. Line of redness present at right buttock & thigh.

8. It is submitted by the learned advocate for the appellant that this is a case which is squarely covered by the decision of the Apex Court in the case of Subramaniam Vs. State of Tamil Nadu and Another, and in the case of Sohel Mehaboob Shaikh Vs. State of Maharashtra, and has submitted that the circumstances of the deceased and her husband living together alone in absence of any evidence of violence on the deceased cannot conclusively establish the guilt of the appellant.

9. Further, it is contended that circumstantial evidence is not so clinching that would persuade us to take a view that the decision of the learned trial Judge requires to be confirmed as there is no one who had seen the accused and the deceased together. The deceased was found in the field and not at the residence of the accused, and further more, it is submitted that the so-called injuries which

are caused by the weapon stick is also not found. According to the learned advocate for the appellant, the house belonged to not only accused but of all the family members. According to learned advocate, the Police Inspector i.e. Investigating Officer had not registered the case as death. It was an accidental death but later on under the pressure of the people from the side of the deceased, the accused has been wrongly charge-sheeted u/s 302 read with section 201 of IPC.

10. As against this, learned APP Ms. Shah has heavily relied on the decision of the Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, . She has also relied on the latest decision of the Apex Court in the case of Harivadan Babubhai Patel Vs. State of Gujarat, and in the case of Shyamal Ghosh Vs. State of West Bengal, , which according to her, goes against the accused as his conduct was such which shows that it was he and he alone who had committed the offence and no one else.

11. In this case, the chain of events go to show that even if we believe that sec. 498A is not made out, it goes without saying that the deceased was being harassed.

12. PW-1 Ishwarbhai Hamirabhai Patel Ex. 73, in his evidence has stated that appellant was beating his sister and before one week of the incident, deceased had come to his house and told that her husband was beating her. He further deposed that deceased had come to his house ten times due to physical and mental torture by appellant. PW-2 Shamlabhai Vahtabhai Patel Ex. 77 who is uncle of the deceased. In his evidence, this witness has stated that appellant was frequently beating her because she was not liked him and she used to come her parents" house. He further stated that twice or thrice he had sent her back to her matrimonial house when she came to her parents house due to quarrel with appellant. PW-3 Sonaben w/o Hamirabhai Patel Ex. 78, in her evidence has stated that whenever deceased came to her house, deceased told her that appellant was beating her because deceased was not liked him and because of beating, deceased was frequently used to come to her house. She further stated that prior to one week of the incident, deceased had come to her house and told her that appellant had beaten her and kicked her out of house. From the evidence of these witnesses, it is clear that appellant was beating and harassing her, and the circumstances that the dead-body was found in the field which belonged to the accused. The medical evidence rules out the suicidal and accidental death as it was homicidal death, and therefore, the next question which requires to be answered is whether it was the accused and the accused alone who had caused the death. The inevitable answer shows that the prosecution has succeeded in leading the evidence and successfully proved that the husband and wife were earlier seen together at night before the incident occurred. It was in the field of the accused. He was found to be in his dwelling house. His conduct goes to show that he has no remorse. He did not even attend the funeral ceremony of deceased wife. He did not even try to save her, however,

his theory under sec. 313 of CrPC is believed that it was accidental death. The injuries which were there on the wife, he has not given any explanation under sec. 313 of CrPC, which indicates that he has committed the crime. The circumstantial evidence, therefore, will not persuade us to take a different view than that taken by the learned trial Judge. The learned trial Judge in his judgment has elaborately discussed this issue and the Hon''ble Apex Court in a recent decision has held that the first court of appeal finds that the findings of the trial Court are neither perverse nor the view which is otherwise can be taken, is taken by the trial Court, may not give separate reasons. However, we have thread-bare scrutinized the evidence on record which points to the guilt of the accused and accused alone. The decision cited by the learned advocate for the appellant would not held the appellant. In the decision of Sohel Mehaboob Shaikh vs. State of Maharashtra (supra) the Apex Court granted benefit of doubt as he was not found in the room, however, in this case, the accused was present in the room at the time of occurrence which is his dwelling house. The time of occurrence goes to show that it was he alone who had committed the offence. The decision of the Apex Court in the case of Subramaniam vs. State of Tamil Nadu (supra) will also go against the accused. The false explanation and the explanation under sec. 313 of CrPC will prove against him. Even as per the provisions of Sec. 11 and 106 of the Evidence Act, no doubt is now created that the accused was not guilty of the commission of murder of his wife. He has further tried to conceal the dead-body and tried to see that the dead-body is not found. He was aware that the incident had occurred, however, he saw that she was charred and her dead-body could not be found and that is how the allegation under sec. 201 of IPC has been alleged. However, we do not find that the prosecution has brought home the charge under sec. 201 of IPC, and therefore, the conviction under sec. 201 of IPC requires to be set aside. However, on the first count, the judgment requires to be confirmed. There is extra judicial confession, however, that is just minutely weigh with us but the conviction is based on complete chain of incident. Recently, the Apex Court has held that extra judicial confession can also be made basis of conviction. In that view of the matter, this appeal requires to be partly allowed. In the result, this appeal is partly allowed. The impugned judgment and order of conviction and sentence dated 30.3.2007 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa in Sessions Case No. 19/2003, convicting the appellant for the offence u/s 201 of IPC and sentencing him to undergo S/I for ten years and to pay a fine of Rs. 1000/-, in default, to undergo S/I for one month, is quashed and set aside, and fine, if paid for the same, is ordered to be refunded. Rest of the impugned judgment and order of conviction and sentence is confirmed. R & P to be sent back to the trial Court, forthwith. However, it is clarified that life would not mean last breath and the State Government may consider the case of the appellant after 14 years, as this is not a case of gruesome murder.