

(2015) 02 GUJ CK 0028

In the Gujarat High Court

Case No : Criminal Revision Application No. 339 of 2009

Rameshbhai Chhanabhai Dafda

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 114, 306, 498A

Citation : (2015) 02 GUJ CK 0028

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Harshad K. Patel, for the Appellant; Jirga Jhaveri, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—Heard learned advocate Mr. Harshad K. Patel for the applicant, learned advocate Mr. M.B. Parikh for respondent Nos. 2 to 9 and learned APP Ms. Jirga Jhaveri for the respondent - State.

2. The applicant is original complainant, who has challenged the judgment and order of acquittal dated 09.03.2009 by the Additional Sessions Judge, Fast Track Court No. 2 in Sessions Case No. 36 of 2008, which was initiated pursuant to Amreli Taluka Police Station II - C.R. No. 12 of 2007 under Section 498A, 306 and 114 of the Indian Penal Code.

3. The sum and substance of the complaint is to the effect that victim Hansaben, wife of the complainant has committed suicide because of mental and physical cruelty by his relatives, who are respondent Nos. 2 to 9 herein. It is not disputed that marriage span of the victim is more than 7 years and she has four children out of such marriage but on 11.02.2008 she has committed suicide by pouring kerosene and ablaze herself. At that time, complainant has tried to save her, which resulted into several burn injuries to the complainant also, but ultimately victim succumbed to the burn injuries and hence husband has filed complaint

against his own uncle and other relatives.

4. If we perused the impugned judgment, the trial Court has categorically recorded the outcome of cross - examination of the complainant himself, wherein complainant has no option but to admit that they have no relation with the family of the accused - respondent and that his marriage was taken place before more than 10 years and probably before 20 years. It is also admitted by him that victim has filed cases against his father and there was dispute between father and son regarding some plot, whereby victim was under impression that she has not get equal share in partition between family members by her father - in - law. It is also admitted position that there was rivalry between the family members because of election of Sarpanch, where one of the accused namely Bhanubhai has won the election of the Sarpanch, whereas family member of the victim and complainant has lost the same.

4.1 Though some incidents were narrated by the complainant regarding some statements made by the accused, prima - facie it becomes clear that provision of Section 498A of the Indian Penal Code is certainly not attracted in this case because accused are not father - in - law or near relatives of the victim but they are uncle and other family members of the father-in-law of the victim and they are not in good terms from decades together.

4.2 If we perused the impugned judgment, the trial Court has scrutinized the evidence properly and explained the relevant admission by the concerned witnesses, wherein it has become clear that victim was survived after recording first dying declaration and, therefore, it cannot be treated as dying declaration at all and there is material contradictions in the deposition of the complainant and statement by the victim in the dying declaration, in as much as, the victim has stated that nobody was at home when she has tried to suicide, whereas husband has categorically stated that he was at home, such fact is supported by his burn injuries. The trial Court has also recorded several contradictions. The trial Court has also examined the defense at exhibit 42 and 36. The trial Court has also recorded that there is no smell of kerosene. The trial Court has also recorded that there is material contradictions so far as nature of incident and knowledge with discloser of incident is concerned. It is also recorded that doctors were not aware that who has brought the victim to the hospital and on the contrary another doctor says that condition of the victim was good when she was brought to the hospital, but she has not disclosed the name of the accused. The overall reading of evidence makes it clear that only allegations of the victim to the effect that when she was moving in the society, ladies members of the other-side were speaking some improper words. However, there is no relation between the parties from 3 to 4 decades. Moreover, dying declaration does not disclose the name of a person nor the nature of cruelty.

5. The trial Court has therefore after considering the evidence before it and after relying several decisions of the different Courts acquitted all the accused.

6. Even otherwise this revision application is against the order of acquittal. Therefore, as per settled legal position, there is very limited scope to re-appreciated the evidence.

7. The jurisdiction of the Court in such revision petitions is limited by the statute itself, thereby prima-facie, the Court has to look into the issue regarding irregularity or illegality, if any, committed by the trial Court while passing the impugned judgment and whether the impugned judgment has ultimately resulted into miscarriage of justice or absolute injustice to either of the litigants. Therefore, this being the first revision against the order of acquittal, though this Court is empowered to re-appreciate the evidence, to examine that whether appreciation of evidence by the trial Judge has resulted into miscarriage of justice or not, it is settled legal position that such re-appreciation of evidence has to be done with limited jurisdiction and authority so as to verify the irregularity and illegality only and evidence cannot be re-appreciated or dealt with, only because of different opinion of the Appellate Court. Thereby, the Appellate Court has to be careful while re-appreciating the evidence in case of acquittal and decision of acquittal can be interfered only and only if the appreciation of evidence by the trial Judge is absolutely unjust and illegal and without consideration of settled legal position and applicable law. Thereby, only because someone is able to take a different view from the same set of evidence, on such ground alone, the evidence cannot be re-appreciated so as to convert the decision of acquittal into that of conviction of accused. To that extent, the Apex Court has categorically stated that in case of acquittal appeal or revision, the accused have got double benefit in their favour viz. (1) a standard rule of criminal jurisprudence that no-one should be believed as an accused unless there is proper proof and evidence against him and (2) in such cases of acquittal, the judgment of acquittal, which is otherwise confirming either innocence or lack of evidence against such accused. Therefore, respondent before us though they were accused before the trial Court, they are having a clear verdict in their favour by the trial Court that either they are innocent or there is lack of evidence so as to convict them and, therefore, in such cases, the re-appreciation of evidence is to be done with great care and order of acquittal can be interfered only and only if there is absolute and clear evidence without any doubt regarding commission of offence by such respondent. Therefore, the smallest benefit of doubt would certainly tilt in favour of the respondents in criminal appeal or revision.

8. If we peruse the entire evidence in its totality and if we consider the appreciation of such evidence, though there may be difference of opinion, if we re-appreciate the evidence, it is crystal clear that one cannot come to the conclusion that there is any irregularity or illegality and that the learned trial Judge has failed to consider such evidence as cogent and reliable evidence against the present respondents for confirming their guilt. To that extent, there is no reason to disapprove the appreciation of such evidence so as to interfere the decision of acquittal either into the decision of conviction or for retrial of the

entire case as argued by the petitioner before this Court.

9. It cannot be ignored that decision of acquittal cannot be converted into decision of conviction only because there is possibility of coming to different opinion or conclusion while appreciating the evidence on record by the Appellate Court.

10. Looking to the facts and circumstances and evidence on record as discussed herein above and more particularly as discussed by the learned trial Judge in the impugned judgment, having limited jurisdiction in revision application against order of acquittal, this Court is not convinced to interfere with the decision of acquittal merely because the victim prefers such revision, more particularly in absence of cogent and reliable evidence on record against the respondents. For coming to such conclusion, the reliance is placed upon the judgments of the Apex Court in *Johar and Others Vs. Mangal Prasad and Another*, and *Sheetala Prasad and Others Vs. Sri Kant and Another*, , which makes it clear that interference with judgment of acquittal is not permissible unless impugned judgment is perverse. The revisional jurisdiction u/ss. 397 and 401 of the Cr.P.C. is limited, more particularly when it is arising from a judgment of acquittal and it is not permissible for the High Court to analyse the depositions of all the witnesses and to re-appreciate the whole evidence. There must be any error of law on the part of the trial Judge and unless any evidence has been left out of consideration by the trial Judge or any irrelevant material has been taken into consideration, then and then the High Court has to re-appreciate the evidence.

11. In view of discussion herein above on facts, evidence and law point, I do not find any error of law or irregularity or illegality or perverseness in the appreciation of evidence and decision by the trial Judge, which does not permit this Court to come to any different conclusion even if entire evidence is examined herein above to convert the decision of acquittal into that of conviction or to order the re-trial as prayed for by the petitioner. The result is there is no substance in the petition, which deserves to be dismissed and, hence, dismissed. Rule is discharged.