

(2004) 03 GUJ CK 0032
In the Gujarat High Court
Case No : Criminal Appeal No. 299 of 2003

Rameshbhai Punjamji Maji Rana (Bhil)	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 489
Penal Code, 1860 (IPC) — Section 107, 114, 306, 498A

Citation : (2005) 2 ALT(Cri) 27

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Ashutosh R. Bhatt and Bharat J. Joshi, for Petitioner No. 1-2, for the Appellant; Nandini Joshi, APP, for the Respondent

Judgement

C.K. Buch, J.—This appeal is filed against the order of conviction and sentence dated 28.1.2003 passed by the learned Additional Sessions Judge, Fast Track Court, District Banaskantha at Deesa whereby the learned Judge convicted the appellant accused for offence punishable u/s 306 and 498A read with section 114 IPC and sentenced each of them to suffer R.I. for 3(three) years and to pay a fine of Rs.3000/- in default to further undergo R.I. for three months. The learned Judge also convicted the appellant accused for offence punishable u/s 306 read with section 114 I.P.C. and sentenced each of them to suffer R.I. for 6(six) years and to pay a fine of Rs. 5000/- in default to further undergo R.I. for 6 (six) months. The above sentences are ordered to run concurrently.

2. The facts giving rise to this appeal are as under:

2.1 That the appellant-accused no.1 had married the victim Bai Rupa, daughter of the complainant Shambhubhai Ramjibhai about three years prior to the incident. But after 2-1/2 years of the marriage the accused no.1 husband of Bai Rupa and her in-laws started giving mental torture to her, Till that period Bai Rupa was happy with the atmosphere of her in-laws and her husband-accused no.1. The accused started giving physical and mental torture to Bai Rupa as they

wanted Rs. 50,000/- for construction of a bore well in the agricultural land owned by them as they were cultivating their own land as well as the land of neighboring land owners. When the accused told about this to Bai Rupa and her father Shambhubhai Ramjibhai, they expressed their inability and Shambhubhai told the accused persons that he is a poor man and therefore, he will not be able to give such a large amount. But when they were pressurized by the accused persons, in the interest of Bai Rupa, Rs. 2500/- were given by way of extending help in the construction of a bore well.

2.2. It is the say of the prosecution that this amount of Rs. 2500/- were borrowed from the relative of Shambhubhai-the complainant. According to the prosecution about four months thereafter, accused no.1 along with his wife i.e. deceased Rupa had gone to the complainant and demanded the amount. At that time Bai Rupa had informed that she is being tortured and harassed as her husband and father in law i.e. accused nos 1 and 2 are not paid the amount demanded. She also expressed her apprehension that if the amount is not given by the complainant i.e. father of Bai Rupa then she may be subjected to physical and mental torture and cruelty.

2.3. It is the case of the prosecution that about a week prior to the incident accused no.2 and Bai Rupa once again had gone to the house of the complainant and at that time accused no.2 told the complainant that he should send his daughter only if he could arrange for the money demanded not otherwise. Thereafter Bai Rupa stayed at the house of her father i.e. complainant for 4-5 days and the complainant was trying to get the amount but he was not able to manage. So he sent Bai Rupa along with his son at her matrimonial house and on return the brother of the deceased Bai Rupa i.e. son of the complainant Lebbabhai told the complainant that the accused were demanding money.

2.4. On the unfortunate day, at about 5.00 p.m. the accused no.1 had gone to the house of the complainant and demanded money and the complainant requested him his son in law that he is trying for the amount from the neighbors and he would arrange for Rs. 2500/- to 10,000/-. Thereupon the accused no.1 got annoyed with the offer made and he returned at about 9.00 to 10.00 p.m. On the date of the complaint at about 5.00 a.m. one Prabhubhai Dhanjibhai a relative of the complainant and other 3-4 persons informed the complainant that Bai Rupa had died as she has fallen in a well.

2.4. Initially they had gone to Deesa Civil Hospital and thereafter they went to Deesa (Rural) Police Station and Shambhubhai lodge a complaint.

3. The complaint came to be registered as CR-I 202 of 2001 for the commission of the aforesaid offences.

4. After investigation the police charge sheeted both the accused and at the conclusion of the trial the learned Sessions Judge convicted both the accused as mentioned hereinabove and this order of conviction and sentence is under challenge in this appeal.

5. Mr. Bhatt learned counsel for the appellant accused has taken me through the grounds agitated against the order of conviction and sentence in the memo of appeal. I have also heard the learned APP Ms. Joshi for the respondent State.

6. The learned counsel have mainly referred to the oral evidence of three witnesses viz. Shambhubhai Ramjibhai the father of the deceased Bai Rupa, the mother of the deceased Thagiben and Lembhaji brother of the deceased. They have also referred to the post mortem notes, inquest panchnama and panchnama of the scene of occurrence wherein the investigating agency has described the situation of the well and the fact that the well in which the deceased jumped was a dry well and there was no water in the same.

7. It is argued by Mr. Bhatt that the three witnesses, in their evidence have not uttered anything by which it can be either inferred or held that deceased Bai Rupa was meted out any cruelty in the first 2-1/2 years of her married life. On the contrary the complainant himself has accepted that after the marriage, she was frequently visiting the village Mahadevasaya i.e. matrimonial house with his daughter and his daughter was staying happily with her in-laws. There was no element of any torture. He has also accepted the suggestion made during cross examination that deceased Bai Rupa and both the accused were also coming to his village-Vakvada.

8. It is not the case of prosecution that there was any demand by the accused in the first 2-1/2 years of the marriage of Bai Rupa. So even for the sake of argument it is accepted that the accused persons had expressed their desire to see that the father of deceased Bai Rupa contributes something for the construction of the bore well that by itself cannot be said to be a demand of dowry or a demand with an intention by itself it would constitute cruelty. Even if the court accepts that the the accused no.1 must be insisting that the complainant and his family must pay some good amount, say Rs.50,000/so that he can construct a bore well then also said insistence cannot be said to be cruelty by itself. The case of the prosecution is that the bore well was also construction and as some amount was required as and by way of contribution, both their accused persons were putting pressure on Bai Rupa as well as her parents so that they can pay the contribution and enjoy the bore well. Undisputedly, the bore well was constructed in the land owned by the real brother of accused no.2. It is in evidence that adjacent owner of the land i.e. the real brother of accused no.2 was residing in other village and therefore, the land owned and occupied by him was under cultivation by both these accused persons. So it is submitted by Ms. Joshi that the Trial Court has rightly appreciated the evidence led by the prosecution in this regard and some controversy qua their oral say and actual occupancy and ownership of the agricultural land where the bore well is located, would not go to the root of the merit of the prosecution case.

9. The demand of money may not by itself can be equated with either physical or mental cruelty but the act of putting pressure and that too by increasing the

frequency of demand and ill treatment on account of non payment of such amount, positively would constitute cruelty within the meaning of section 489 Cr.P.C. On careful consideration of the oral version of these three main witnesses i.e. Shambled Ramjibhai, Thagiben and Lembuji, it is clear that till the date on which the demand for Rs. 50,000/- was placed before the complainant Shambled the family of the deceased Bai Rupa was happy and there was no ill treatment to her. So it can be said that the prosecution mainly relies on the evidence of cruelty meted out to the deceased, both physical and mental before six months of the date of incident.

10. As per the date of the prosecution in this six months period, 3-4 visits have been made at the house of the complainant Shambled and on one occasion the accused no.1 was paid Rs.5000/- and on second occasion he was assured that he may be paid Rs.5000/- to 10,000/- i.e. on the date of the incident when he returned annoyed from the house of the complainant. It is in evidence that when accused no.1 returned on the fateful day, it was about 9.00 p.m. and the accused no.1 and his wife were already in their bed. It is a known fact that normally, the village people are in the habit of going to bed in the early hours of night. Accused no.1 was served with the milk by the deceased. There was some exchange of words between accused no.1 and his wife Bai Rupa and during this exchange of words or discussion deceased Bai Rupa had left the kitchen or the place where her husband was taking the milk as if she is going to her bed by taking milk. The accused no.1 husband went to bed and as the deceased Bai Rupa was not found in her bed, he started to search out the deceased Bai Rupa and ultimately he realised that Bai Rupa had jumped into the nearby well. 8.4.2004

11. It is in evidence that during the period of wedlock of 2-1/2 years, deceased Rupa had frequently visited on social as well as other occasions her parental home and never complained about any ill treatment or insult at all against her husband or in-laws. At one point of time p.w. 1 Dr. Ramabhai Akodiwala exh.8 was suggested that the injuries found on the body of deceased Rupa could be sustained even if she has been thrown into a well after inflicting injuries on her head. Indirectly, the prosecution has attempted to establish through the evidence of Dr. Akodiwala that the husband of deceased Rupa (accused no.1) might have beaten her; but there is no direct evidence nor is the allegation that any person other than the husband of deceased Rupa had participated even in the exchange of words which had taken place after the return of Ramesh-appellant no.1 the husband of deceased Rupa.

12. Careful consideration of panchnama of the scene of offence and especially the panchnama of the well, it was possible to infer for the investigating agency as well as the Trial Court that all the injuries found on the body of the deceased can be sustained if the body collides with hard and blunt substance like log of wood or girder which were there in the well. Of course the prosecution has not asked any positive question to the Doctor that all the 7 injuries found on the

body of deceased Rupa can be sustained during a fall. When the appellants are not charge-sheeted for murder nor is there any evidence of finding of blood at any place either at the house or near the well, it would be improper to infer that the deceased must have been physically ill treated or she could have been inflicted injuries by the appellant no.1-the husband of deceased Rupa. On the contrary, non availability of undigested food in the stomach of deceased Rupa, indicates that she might not have taken food on that evening hours or she might have taken her evening meals, 6 hours prior to the time of her death.

13. The positive questions asked by this court and the answers given by Doctor creates an impression that she might not have joined her husband when he was taking evening meals or under agony created by her husband, who returned empty handed, must have taken her to an unnatural decision. The conduct of the appellant-no.1 accused immediately after the incident is relevant and the consistent stand of the appellant no.1 as to the incident cannot be ignored.

14. Undisputedly, the bore well was not under the process of digging in the lands of the appellants. Of course, they might be interested in digging the bore well in the adjacent field of the brother of appellant no.2 so that they can use the water in irrigating their own land. So the submission of Mr. Bhatt that there was no cause for the appellants-accused persons and especially the appellant no.1-husband, to place a demand of Rs. 50,000/- from the parents of deceased Rupa, is not found reasonable and convincing. But it is also equally true that such a wish or desire to have financial help from in-laws laws by itself could not become an illegal or unhealthy demand or desire or demand of such money from in-laws amounts to torture on in-laws or the same can be said to be cruelty to the victim.

15. Deceased Rupa was sent to her parent's house once prior to the date of incident, which has come on record through the evidence of Labhaji exh.18 as he has stated that he had gone to put his sister at the house of the appellants. This positively indicates that in order to pressurise the parents of deceased, the appellant no.1 had acted in a harsh manner and that this conduct of the appellant no.1-the husband can be said to be cruelty within the meaning of section 498A IPC. So the Trial Court has rightly held the appellant no.1 guilty for the offence punishable u/s 498A IPC and the reasons assigned by the Trial in this regard, if scrutinised, it is clear that they are based on availability of satisfactory and convincing legal evidence. The say of Mr. Bhatt is not found acceptable that, as there is no evidence on the point of cruelty, either mental or physical for the first two years of the married life, the appellant no.1-accused could not have been convicted for the offence of cruelty. It is on record that the in-laws of appellant no.1 i.e. parents of deceased Rupa are having bore well in their agricultural land and the entire family of deceased Rupa was actively working in the field. So it was not that impossible to arrange for the amount of Rs. 50000/-. But it is not the say of the accused that the demand made before deceased Rupa and her family was a mere request and the entire amount was otherwise to be returned back to the family of deceased Rupa. On the contrary the evidence led

by defence witnesses examined by the prosecution add some strength in the case of the prosecution that there were talks about giving of some money to the appellant no.1. The defence witnesses whose names are not suggested to any of the prosecution witnesses and especially to the complainant and p.w. Labhaji-brother of deceased Rupa, who have been brought in the witness box. The appellants-accused attempted to establish some probabilities contrary to the case of prosecution but they have failed in their attempt and this aspect cannot be ignored when the statement of accused recorded u/s 313 Cr.P.C. is to be appreciated in the back ground of evidence led by the prosecution on this point. So there is sufficient evidence on record to show that Bai Rupa was placed under more than reasonable mental pressure so that her parents can be compelled to part with some amount over and above the amount of Rs. 5000/- which was paid on earlier occasion so that the family of the appellant no.1 husband can contribute against the expenses incurred or nothing to incur in the digging of bore well.

16. It is true that the appellant no.2 -Punmaji Jaksi the father of Ramesh appellant accused no.1 might not be a party in putting pressure on deceased Rupa so far as the amount is concerned. There is no evidence on record to show that he had visited the parental home of deceased Rupa in reference to the demand of Rs. 50000/- placed before them nor is there any evidence in the deposition of any of the prosecution witnesses that Punmaji had also started ill treating deceased Rupa as she was not able to bring money from her parents. Even for the sake of argument it is accepted that he was also carrying some wish or desire that parents of deceased Rupa pay some amount for the digging of bore well and that is why he was supporting his son, that by itself would not equate with an act or omission in encouraging or adding cruelty , especially when there is positive evidence by way of admission made by important prosecution witnesses viz. complainant and Labhaji that deceased Rupa was treated well and she was happy in her in-laws house till the date on which the demand of Rs. 50000/- was made for the first time before them by appellant - accused no.1.

17. On the eve of the date of incident only appellant accused no.1 Ramesh had gone to his in-laws house and had returned with disappointing reply. It is neither the case of prosecution nor is the evidence that on return of appellant no.1 in the late evening, say at about 10.00 p.m., appellant accused no.2 Punmaji had joined his son Ramesh or was a party in the exchange of words or in giving any other ill treatment meted to deceased Rupa. On the contrary the circumstances show that he had gone to bed. So it will be difficult to infer that the conduct of appellant no.2 can be said to be a conduct of an abettor within the meaning of section 107 IPC so far as the offence punishable u/s 498A IPC is concerned. It was possible for the Trial Court to give benefit of doubt to appellant no.2, the father in law of deceased Rupa for the offence punishable u/s 498A IPC. It will be very difficult for this court to conclude this court that any presumption can be drawn against appellant no.2 or there is sufficient circumstantial or direct evidence against the appellant no.2 under which he can be held guilty of the

offence punishable u/s 498A IPC or read with section 114 IPC.

18. The learned Trial Judge has rightly considered the inconvincing explanation given by accused no.1 on the point of his visit at his in-laws place etc. and the evidence led by prosecution witnesses as to his demand of Rs. 50,000/- from the father of deceased Rupa. Though the earlier part of the matrimonial life of the appellant no.1 with deceased Rupa was peaceful, the element of disharmony has resulted into mental cruelty. It started from the day moon which the appellant no.1 husband made illegitimate and unwarranted demand of Rs.50,000/-, which is very huge so far as a middle class villager is concerned. The evidence of defence witnesses through their evidence, have attempted to enlarge the lame excuse put forward by appellant no.1. The evidence led by these witnesses, on the contrary helps the story unfolded by the prosecution. The conduct and attitude of the appellant no.1 to put pressure on deceased Rupa, if considered, the same can be said to be cruelty within the meaning of section 498A IPC. So, the finding recorded by the learned Trial Judge being legal, this court is not inclined to disturb the said finding and therefore, the conviction and sentence u/s 498A IPC is required to be confirmed.

19. So far as the finding recorded by the Trial Court holding both the appellants guilty for the offence punishable u/s 306 IPC is concerned, there is no legal evidence against any of these two appellants accused as there is nothing on record to show that anything was done or that there was any illegal omission on the part of any of the accused which would bring their act within the clause "thirdly" read with explanation 2 of section 107 IPC. Even if accused is held guilty for the offence punishable u/s 498A IPC that by itself would not give rise to attraction of section 306 IPC. The accused who is subjecting a women to cruelty would not become abettor automatically so far as the offence punishable u/s 306 IPC is concerned. The ratio of the decision in the case of Rameshbhai Ranchhodbhai & anor vs. State of Gujarat reported in 1990(1) Crimes 417 is squarely applicable to the facts of the present case wherein this court has held that section 306 and 498A are two independent sections in the Code and it is required for bring home the offence u/s 306 IPC to establish abatement on the part of the accused and where there is no evidence as to the intentional aiding, mere aiding may not amount to abatement unless it is an intentional act. Mere act or omission on the part of a person which in fact, results in facilitating the commission of the offence, will not satisfy the requirement of explanation 2 of clause "thirdly". In the present case there is no iota of evidence against appellant no.2 Punmaji in reference to the act of deceased Rupa jumping into the well. It seems that he was not even present in the room or kitchen after the return of his son Ramesh appellant accused no.1 from his in-laws house. Before some days, his visit at the residence of the complainant when demand of Rs, 50000/- was made or some amount of Rs. 5000/- was paid by itself would not make appellant accused no.2 Punmaji an abettor of the act of suicide committed by deceased Rupa. The Trial Court ought to have acquitted accused no.2 of the offence punishable u/s 306 IPC for want of convincing legal evidence.

20. The decision cited by Mr. Bhatt in the case of Wazir Chand & anor. vs. State of Haryana reported in 1989(1) Crimes 173 would not help the appellant accused. The Apex Court in the cited case was not satisfied with the evidence of the "other person" committed suicide and when there is no satisfactory legal evidence to the fact of committing suicide, conviction u/s 306 read with section 114 IPC is liable to be set aside. In the present case there is no dispute of the fact that deceased Rupa committed suicide. In the case of Rameshbhai Dalaji Godad vs. State of Gujarat reported in 2003(3) GLR 2390 it has been held that lack of positive evidence of abetment of suicide by husband, the conviction of husband cannot sustain. In the present case, it indirectly emerges from the medical evidence as well as other circumstances that the appellant no.1 husband might not have even though that some irritative reply given by him or exchange or words would taken such a serious turn; otherwise in all respects the marital life of deceased Rupa as well as appellant no.1 was very happy and cordial and deceased Rupa was from a happy settled family and the appellant no.1 had never given any cause either anguish or dissatisfaction to deceased Rupa . It is the experience of the society that quarrel between the spouse during lunch or dinner, some times, takes a sensitive turn.

21. The Trial Court, considering the totality of facts and circumstances emerging from the record and in light of positive evidence as to the cordial and harmonious relations between the husband and wife for a continuous period of 2-1/2 years ought to have concluded that some bitter words even if spoken by the husband to his deceased wife Rupa after his return from his in-laws house, would make him a abettor to the act of suicide to committed by deceased Rupa. The Trial Court has erred in not giving benefit of doubt to appellant accused no.1 so far as offence punishable u/s 306 IPC is concerned.

22. In short, this court is of the view that the order of conviction and sentence so far as appellant accused no.2 Punmaji , for the offences punishable u/s 306 IPC read with section 114 IPC and section 498A IPC are concerned, they are found erroneous and not in accordance with the accepted principles of law. Therefore, he deserves to be acquitted for both the offences. Accordingly he is acquitted. The fine if paid, be refunded to him. If the appellant accused no.2 is on bail, his bail bond stands cancelled.

23. So far as the appellant accused no.1 is concerned, the evidence against him for the offence punishable u/s 306 IPC read with section 114 IPC is weak and it can be said to be in shadow of doubt. So the appellant accused no.1 is required to be given benefit of doubt so far as offence punishable u/s 306 IPC read with section 114 IPC is concerned and he is required to be acquitted of the said offence. Therefore, appellant accused no.1 is acquitted for the offence punishable u/s 306 IPC read with section 114 IPC is concerned. Fine if paid be refunded to him.

24. However, in view of the discussion made in paras 16,17 and 18 of this judgment ,the conviction and sentence recorded by the Trial Court against the

appellant accused no.1 is required to be confirmed so far as the offence punishable u/s 498A is concerned. Hence the order of conviction and sentence recorded by the Trial Court against the appellant accused no.1 so far as offence punishable u/s 498A IPC is confirmed.

The appeal is partly allowed in the above terms.