

(2010) 10 GUJ CK 0025

In the Gujarat High Court

Case No : Criminal Revision Application No. 530 of 2006

Rekhaben Rameshkumar Raval

APPELLANT

Vs

Chogalal Lachchiram Raval and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 323, 498A, 504, 506(1)

Citation : (2010) 10 GUJ CK 0025

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Archana R. Acharya, for Respondents 1-10 and C.M. Shah, APP for Respondent 11, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The Petitioner is the original complainant. She had filed a criminal case No. 963/1998 before the learned JMFC, Chota Udepur on 26.11.1998 alleging commission of offences punishable under Sections 498-A, 504, 323, 506(1) read with Section 114 of the IPC against original accused. On the said complaint, learned Magistrate recorded statements of complainant on 26.11.1998 and on the same date issued process against the accused for said offences. Learned Magistrate by order dated 21.7.2004 ordered framing of charges for offence under Sections 498-A, 504, 323, 506(2) read with Section 114 of the IPC.

2. Said order of the learned Magistrate was challenged by the original accused by filing Criminal Misc. Application No. 6/2004. Said revision application was partially allowed by the learned Additional Sessions Judge by his impugned order dated 26.7.2006. Learned Magistrate ordered framing of charge for offence under Sections 498-A and 506(1) of the IPC against original accused No. 1 Ramesh kumar Chogalal Rawal i.e. husband of the complainant. This was in modification of the order of the learned Magistrate who had directed framing of charge against husband for offence under Sections 498-A, 504, 323, 506(2) read

with Section 114 of the IPC. With respect to rest of the accused No. 2 to 11, learned Sessions Judge had set aside the order of the Magistrate and dropped all the charges against the said accused.

3. Insofar as husband is concerned, there is no further challenge either by him or by his wife and the order of the learned Sessions Judge insofar as accused No. 1 Ramesh kumar Chogalal Rawal is concerned, same has achieved finality. However, with respect to rest of the accused No. 2 to 11 who are relatives of the husband, order of learned Additional Sessions Judge has been challenged by the wife in the present petition.

4. In the impugned order, learned Additional Sessions Judge was of the opinion that learned Magistrate had ordered framing of charge though it had taken into account the evidence of witnesses examined by the complainant, at a pre - charge stage, cross examination was completely ignored. Learned Additional Sessions Judge scanned through the pre-charge evidence and found number of improbabilities and contradictions insofar as accused No. 2 to 11 are concerned. It was observed that though complainant Rekhaben has given precise date of each incident, however, even as mother she could not remember date of birth of her son. Learned Judge also found that with respect to telegram sent by her father in English, Rekhaben had stated that her father is educated and knows English. However, her father Shivram Dharmaji Rawal in his cross examination admitted that he did not know English and the telegram was drafted by the postmaster. Learned Judge further found that though on one occasion complainant alleges that she was beaten by all the accused including with the chair, she had not taken any medical treatment. Learned Judge also found that all accused are residing at Rajasthan in different villages. Accused No. 3, 5 ,7 and 11 are lady members. It is therefore, highly improbable that all of them would converge together at one place on the same date. Learned Judge was therefore, of the opinion that insofar as accused No. 2 to 11 are concerned, there was not enough evidence to proceed against them by framing charge. However, as already noted, with respect to husband of the complainant, learned Sessions Judge found sufficient evidence to frame the charges u/s 498-A and 506(1) of the IPC.

5. I am broadly in agreement with the view of the learned Sessions Judge. It is true that there are some statements of the witnesses making reference to the involvement of present private Respondents. However, learned Additional Sessions Judge has, as already noted, scanned through such evidence and found that there are inherent improbabilities and material contradictions, particularly, finding that other accused were residents of Rajasthan and at different place and not residing with the complainant and her husband, I do not find any reason to interfere with such factual findings. I do not think learned Judge committed any error on merits of the case.

6. This revision application is therefore, dismissed.