

(2016) 02 GUJ CK 0212
In the Gujarat High Court
Case No : Criminal Appeal No. 752 of 2006

Sanjaykumar Shantilal Panchal and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Evidence Act, 1872 — Section 113A, Section 113-A
Penal Code, 1860 (IPC) — Section 107, Section 114, Section 306, Section 498A,
Section 498-A

Citation : (2016) 02 GUJ CK 0212

Hon'ble Judges : B.M. Trivedi, J.

Bench : Single Bench

Advocate : Umesh A. Trivedi, Advocate, for the Appellant; K.P. Rawal, APP, for the Respondent

Final Decision : Allowed

Judgement

B.M. Trivedi, J.—1. The appellants - accused have preferred this appeal under Section 374 of Cr.P.C., challenging the judgement and order of conviction and sentence dated 21.3.2006 passed by the Presiding Officer, Fast Track Court No. 10, Vadodara (hereinafter referred to as "the trial Court") in Sessions Case No. 160/1998, whereby the appellants - accused have been convicted for the offences under Section 498A and Section 306 read with Section 114 of Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 500/-, in default thereof, to undergo another rigorous imprisonment for a period of three months for the offence under Section 498A, and to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs. 2,000/-, in default thereof, to undergo rigorous imprisonment for a period of one year for the offence under Section 306 read with Section 114 of Indian Penal Code.

2. The case of the prosecution, in a nut-shell before the trial Court, was that the complainant Harshadbhai Panchal, father of the deceased Parul, had lodged a

complaint before the Dabhoi Police Station on 27.5.1997, alleging, inter alia, that his daughter Parul had married accused No. 1, Sanjaykumar Panchal two years before the incident in question. It was further alleged that the accused No. 2, happened to be the mother-in-law of the deceased, and both the accused were, physically and mentally, harassing his daughter, and subjecting her to cruelty, as a result thereof, his daughter Parul had committed suicide by pouring kerosene on her body and immolating herself as well as her son Nishit. The Investigating Officer, having carried out the investigation, lodged charge-sheet before the Court of First Class Magistrate at Dabhoi for the offences under Section 498A and Section 306 read with 114 of Indian Penal Code. After the committal of the case to the trial Court, it was registered as Sessions Case No. 160/1998. The trial Court framed the charge against both the accused for the offences under Section 498A and Section 306 read with Section 114 of Indian Penal Code. The accused denied the charges leveled against them and claimed to be tried. The prosecution had examined as many as 16 witnesses and adduced documentary evidence to prove the charges leveled against the accused. The trial Court, after appreciating the evidence on record, convicted and sentenced the accused as stated herein above.

3. Now in the instant case, it is not disputed that the deceased Parul had married accused No. 1 Sanjaykumar Panchal about two years before the incident in question and they had one son named Nishit, who was aged about 9 to 10 months at the time of the incident. It is also undisputed that the deceased was staying at her matrimonial home at Village Simaliya after her marriage and she had committed suicide at her matrimonial home. It is also not disputed that the incident had taken place on 25.5.1997 when the deceased was all alone at home. She and her son Nishit, both, had died as a result of burn injuries on the said fateful day. The witnesses namely PW-1 Mr. Harshadbhai Panchal, who happened to be the father of the deceased, PW-2 Smt. Premilaben Panchal, mother of the deceased, PW-3 Ms. Poornimaben, sister of the deceased, PW-4 Ms. Dipikaben, another sister of the deceased, had categorically stated in their respective evidence that the deceased Parul had committed suicide by pouring kerosene on her body at her matrimonial home at Village Simaliya. The postmortem report (Exh. 57) also stated that she had died due to the burn injuries. However, the moot question that arises for consideration before this Court is as to whether the prosecution had proved beyond reasonable doubt that the deceased was subjected to cruelty by the present appellants - accused, which had driven her to commit suicide and that the appellants - accused had abetted the deceased to commit suicide, so as to constitute the offences under Section 498A and Section 306 read with 114 of IPC.

4. So far as the allegation with regard to the cruelty is concerned, the prosecution has mainly relied upon the evidence of PW-1 to PW-7, who were the father, the mother, the sisters and other relatives of the deceased. PW-1 Mr. Harshadbhai Panchal in his evidence has stated, inter alia, that his daughter used to tell him that her husband Sanjaykumar and mother-in-law Jashodaben were

harassing her mentally and physically and that they were not allowing her to come to his house after the birth of Nishit. As regards the incident in question, he had stated that on 25.5.1997, he was informed by some person that his daughter had received burn injuries and, therefore, he and his wife had gone to Village Simaliya at about 1 p.m. When they reached at the matrimonial house of his daughter, the main door of the house was closed and his daughter Parul was screaming. He had further stated that when he opened the door, he saw that his daughter Parul was lying in burnt condition and her son Nishit had already charred to death. He had further stated that he had taken his daughter to the hospital in one Maruti Van, which was brought by Mr. Jagdishbhai, and on the way his daughter had told him that she had committed suicide because of the harassment of her husband Sanjaykumar and her mother-in-law. According to him, his daughter had also stated to him that she was to be driven out of her matrimonial home by the accused and, therefore, she had committed suicide. In the cross-examination, he had admitted that his daughter had pressure of work at her home and that the father of the accused Sanjaykumar was not keeping good health at the time of the incident in question. He had stated that he and his wife had gone to give the complaint to the police station and had met the Police Inspector whom he knew. He had admitted the contents of the complaint (Exh. 28). He had stated that he was serving in the Home Guards Unit at Dabhoi.

5. The PW-2 Smt. Premilaben, the mother of the deceased Parul had also given deposition on the same lines as of the PW-1 and had stated that her daughter Parul had told them that she had committed suicide because of the harassment of her husband and mother-in-law. In the cross-examination, she had stated that she had not gone to lodge complaint with her husband. PW-3 and PW-4, who happened to be the sisters of the deceased had also stated, inter alia, that the accused were harassing Parulben mentally and physically and they were not allowing her to come to her parents' house after the birth of Nishit. The PW-5 Smt. Jashodaben, who happened to be the mother of the complainant Harshadbhai and grandmother of the deceased Parulben, had also stated that the deceased used to tell her that the accused were torturing her and were not allowing her to see her parents. The PW-6 Mr. Harkishan Panchal was the brother of the complainant and he had also supported the case of the prosecution by stating that his niece Parul was being harassed by her in-laws and, therefore, she had committed suicide by pouring kerosene on her body. The PW-7 Indiraben, who happened to be the sister-in-law (Bhabhi) of the complainant Harshadbhai had also stated that the accused were harassing the deceased Parul and, therefore, she had committed suicide.

6. Thereafter the prosecution had examined PW-8 Rameshbhai (Exh. 52), who happened to be the neighbour of the accused Sanjay. He had stated that on the date of the incident, he had seen some smoke coming out of the house of Sanjay and, therefore, he had informed Sanjay, who was working at his Mill, which was situated near the house of Sanjay. He had further stated that Sanjay having come, they had seen that one lady was burning in the house of Sanjay and,

therefore, Sanjay had covered her with a mattress and also poured water on her. She was the wife of Sanjay, Parulben. Thereafter, she was taken to the hospital in one private vehicle by Mr. Jagdishbhai, the brother of Sanjay. In the cross-examination, he had stated that there was no harassment or torture to Parulben at the instance of the accused. The PW-9 Bhailalbhai, who was also neighbour of Sanjay, had also stated that he had seen smoke coming out of the house of Sanjay and Sanjay had tried to extinguish the fire by covering Parul and Nishit with the mattress. He did not state anything about any kind of torture or harassment being meted out by the accused to the deceased Parul. The PW-10 Mr. Alpeshkumar Panchal, who happened to be the maternal uncle of the accused Sanjay, had not supported the case of the prosecution and he was declared hostile. In the cross-examination, he had stated that Parul was living happily with the accused.

7. The other witnesses examined by the prosecution are PW-11 Dr. Suttapa, who had carried out the postmortem of the deceased. The PW-12 Ms. Bhanuben, was the Head Constable, before whom the complaint was given by the complainant Harshadbhai. The PW-13 Mr. Vithalbhai Chauhan, the Police Inspector, had arrested both the accused and after recording the statements of the accused, he had filed the charge-sheet against the accused. The PW-14 Mr. Sahebrao, the Head Constable, was on duty at the Dabhoi Police Station. He had registered the entry of accidental death, on the vardhi received from the control room. The PW-15 was Babubhai Chavda, the P.I., who had carried out the Inquest Panchnama of the deceased. Lastly, the prosecution had examined the Investigating Officer, PW-16 Manubhai Jani, who had stated about the investigation carried out by him.

8. Now, it was sought to be submitted by the learned APP that the concerned witnesses, who were the close relatives of the deceased had specifically stated in their respective evidence that the deceased was being subjected to cruelty by the appellants - accused, which had driven her to commit suicide. According to him, the deceased having committed suicide within seven years of her marriage, a presumption under Section 113A of the Evidence Act was also required to be drawn against the accused. In this regard, it is pertinent to note that the complainant Harshadbhai, who happened to be the father of the deceased and the other witnesses, who are the mother, the sisters, the grandmother and other relatives of the deceased have given stereotype evidence that there was harassment by the accused to the deceased and, therefore, the deceased had committed suicide. Except the evidence of these close relatives of the deceased, there is no independent witness examined by the prosecution to support the said allegation of harassment or cruelty. The two witnesses i.e. PW-8 and PW-9, who were the neighbours and the independent witnesses, however, had categorically stated that there was no harassment to the deceased by the accused. They had also stated that the accused Sanjay, having arrived at the home, had tried to extinguish the fire by covering his wife, who was burning, with mattress and by pouring water on her and thereby had tried to save her life. If the evidence of

the complainant and his wife is closely seen, it appears that they had tried to make out the case of cruelty by stating, inter alia, that their daughter was not permitted to see them after the birth of the child Nishit. The complainant and his wife had also stated that they were told by the deceased when she was being taken to the hospital that she had committed suicide as her mother-in-law had told her that she would be driven out of the house and she would not be given her son. None of these witnesses had given any specific instance of harassment or cruelty having been meted out by either of the accused to the deceased prior to the incident in question. The sisters of the deceased had also, in their respective evidence, stated that their sister Parul was not being permitted to go to her parents' house. They had also not stated any specific instances of harassment.

9. At this juncture, it may be stated that though the presumption could be raised under Section 113A of the Evidence Act, as the deceased had committed suicide within a period of seven years of her marriage, before raising the presumption under the said provision, there must exist some foundation with regard to the allegation of harassment or cruelty. In the opinion of the Court, a very pertinent observations made by the Apex Court in the case of Ramesh Kumar v. State of Chhattisgarh, reported in , AIR 2001 SC 3827(1), clinch the issue. It has been observed in paragraph 12 thereof that -

"12.... Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - "The other circumstances of the case" used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one...."

10. In the case of Mangat Ram v. State of Haryana, reported in , Air 2014 SC 1782 also it has been held as under:--

"26. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under

Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act."

11. From the aforesaid stated legal position, it is clear that the presumption under Section 113A of the Evidence Act is discretionary and the Court has to consider other circumstances before drawing the presumption. Such presumption is also rebuttable one. Merely because it is permissible to raise presumption, the Court would not presume unless there is some credible material on record to show that the deceased was being subjected to harassment or cruelty by the accused. In the instant case, as discussed herein above, except the general allegation made by the close relatives of the deceased that the deceased was being harassed by her husband and her mother-in-law, there is no other evidence adduced by the prosecution to prove the allegations of cruelty. Such general allegations could not be said to be sufficient evidence to constitute cruelty to hold the accused guilty of the offence under Section 498A of Indian Penal Code.

12. It is also further required to be noted that the offence under Section 498A and Section 306 of Indian Penal Code are two independent offences and the prosecution has to prove, by leading cogent evidence, that the accused had abetted the deceased to commit suicide, so as to hold them guilty under Section 306 read with Section 114 of Indian Penal Code. So far as the abetment is concerned, Section 107 of Indian Penal Code reads as under:--

"107. Abetment of a thing

A person abets the doing of a thing, who-

First.--Instigates any person to do that thing; or

Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing."

13. The present case neither falls under the First Clause nor the Second Clause, as it is not the case of the prosecution that there was any instigation or

conspiracy on the part of the accused, which had abetted the deceased to commit suicide. So far as the third clause is concerned, there is no material on record to suggest that the accused had intentionally aided by any act or illegal omission, which had led the deceased to commit suicide. As held by the Apex Court in the case of Ramesh Kumar v. State of Chhattisgarh (supra), instigation means to goad, urge forward, provoke, incite or encourage to do an act. No such ingredients of abetment have been sought to be proved by the prosecution against the accused. There is nothing to suggest that the accused had, by their acts or omission or by continued course of conduct, created such circumstances that the deceased was left with no other option but to commit suicide. In absence of such evidence, it is difficult to hold that the appellants - accused had instigated or aided the deceased to commit suicide.

14. Even if the evidence of PW-1 and 2, who are the parents of the deceased are accepted in toto, then also they had not specified any instance of harassment or cruelty being meted out by the appellants - accused, to the victim, which could be said to have induced her and led her to commit suicide. Though their version is accepted that their daughter told them while she was being taken to the hospital that she had committed suicide as her mother-in-law had told her that she would be driven out of the house without her son, such allegation itself could not be said to be sufficient by any stretch of imagination to hold that either of the appellants - accused had any intention to see that the deceased should commit suicide. It could neither be said to be any instigation, nor aiding on the part of the appellants - accused so as to constitute abetment within the meaning of Section 107 of Indian Penal Code.

15. Hence, from the cumulative reading of the evidence on record and the assessment of material available on record, the Court is of the opinion that the prosecution had failed to prove by leading cogent evidence, the ingredients of Section 498A and Section 306 read with Section 114 of Indian Penal Code, for which the appellants - accused were charged with.

16. In that view of the matter, the Court is of the opinion that the trial Court has failed to appreciate the evidence on record in the proper perspective and has erroneously held the appellants - accused guilty of offences under Section 498A and Section 306 read with Section 114 of Indian Penal Code. The prosecution having failed by leading cogent and independent evidences to prove the charges leveled against the appellants - accused, they are required to be acquitted by giving them benefit of doubt.

17. For the reasons stated above, the judgement and order of conviction and sentence dated 21.3.2006 passed by the Presiding Officer, Fast Track Court No. 10, Vadodara in Sessions Case No. 160/1998 is set aside. The appellants - accused are acquitted from the charges leveled against them under Section 498A and Section 306 read with Section 114 of Indian Penal Code by giving them benefit of doubt. Their bail bonds stand cancelled.

18. The appeal stands allowed accordingly. R & P be sent back to the concerned trial Court.