
(2007) 09 GUJ CK 0050
In the Gujarat High Court
Case No : Criminal Appeal No. 460 of 2006

Shailesh Laljibhai and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 374, 386, 428
Penal Code, 1860 (IPC) — Section 114, 306, 498A

Citation : (2008) 2 DMC 849 : (2008) 2 GLR 1522

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

Bench : Single Bench

Advocate : A. Dave and Sudha C. Shukla, for the Appellant; D.S. Pandit, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—The appellants-orig. accused (hereinafter referred to as "the appellants") have preferred present appeal u/s 374 of the Code of Criminal Procedure, 1973, challenging the judgment and order of conviction and sentence dated 21st February, 2006 passed by the learned Presiding Officer, 11th Fast Track Court, Gondal and learned Additional Sessions Judge, Rajkot in Sessions Case No. 8 of 2004, whereby the learned trial Judge has held the appellants guilty for the charge of offence punishable u/s 498A read with Section 114, and also u/s 306 read with Section 114 of the Indian Penal Code. The appellant No. 1 is imposed simple imprisonment for 3 years and a fine of Rs. 3000/- for the offence punishable u/s 498A read with Section 114 and to undergo simple imprisonment for 7 years and to pay a fine of Rs. 1000/- for the offence punishable u/s 306 read with Section 114 of the Indian Penal Code. The indefault punishment i.e. for non-payment of amount of fine, imposed for both these offences, is of 4 months and 6 months respectively. The appellant Nos. 2 and 3 are imposed simple imprisonment for 3 years for the offence punishable u/s 498A read with Section 114 of the Indian Penal Code and a fine of Rs. 2000/- and to undergo simple imprisonment for 3 years for the offence punishable u/s

306 read with Section 114 of the Indian Penal Code and to pay a fine of Rs. 3000/-. The indefault punishment i.e. for non-payment of amount of fine, imposed is of 2 months and 3 months for both these offences to both the appellants Nos. 2 and 3 respectively. The appellants have been given benefit of set-off u/s 428 of the Code of Criminal Procedure, 1973, and the sentences are ordered to run concurrently.

2.1 The judgment and order of conviction and sentence has been assailed by way of present appeal. I am told that the present appellant Nos. 2 and 3 are on bail. However, the appellant, husband of the victim-deceased Sonalben, is in prison.

2.2 Shri Jayesh Dave, learned Counsel appearing for the appellants, has taken me through the various grounds mentioned in the memo of the appeal and oral as well as documentary evidence led during the course of trial. It is submitted that the judgment and order of conviction and sentence is bad and the same cannot sustain in the eye of law as the same is based on assumptions and illegal inferences. Material errors while appreciating the oral as well as documentary evidence have been committed by the learned trial Judge and this has resulted into an erroneous conviction of the appellants.

2.3 The main submissions of Shri Jayesh Dave are as under:

(i) The prosecution has not satisfactorily proved that the death of victim-Sonal was a suicidal death.

(ii) If the Court is of the view that the death of victim-Sonal was a suicidal death, there is no evidence on record to show that any of the appellants can be said to have abetted the act of suicide, and therefore, they cannot be linked with the crime punishable u/s 306 of the Indian Penal Code. As per the settled legal position, the prosecution is supposed to prove by leading cogent and convincing evidence that some act or omission had direct nexus with the act of suicide and there is no such evidence on record. Neither any independent witness has been examined to prove such nexus nor any circumstantial evidence has emerged under which the Court can legitimately infer that this is a case of abetment in the act of suicide by victim-Sonal.

(iii) There are number of contradictions and conflicts in the evidence of witnesses examined by the prosecution when the prosecution attempted to prove the guilt of the offence punishable u/s 498A of the Indian Penal Code. As such there is no convincing evidence that the victim-Sonal was treated with cruelty punishable u/s 498A of the Indian Penal Code, some difference of opinion or any quarrel in the conduct reflecting disharmony in the smooth family life cannot be equated with cruelty punishable u/s 498A of the Indian Penal Code. As such there was no cause for any of the appellants to treat the victim-Sonal cruelly. On the contrary, the victim-Sonal herself was feeling frustrated as she could not conceive child in her marriage span of five years. It is in evidence that the victim-Sonal was taken to an expert Gynaecologist and once the curetting was also done and on that occasion the mother of victim-Sonal was also invited and she was attending her

when victim-Sonal was at Rajkot. It is in evidence that in recent past from the date of evidence, the real brother of the victim-Sonal had been to her matrimonial house and had stayed there for about 6 to 7 months as he had some work at Rajkot. The said Bhavesh-brother of victim-Sonal has not been examined. Surprisingly, the father and mother of the victim-Sonal who have stepped into the witness-box have not even said in their evidence that Bhavesh had informed them that his sister i.e. victim-Sonal was not happy at her matrimonial home. There was one proceeding initiated by the victim-Sonal in the Court of learned Judicial Magistrate, First Class, Manavadar u/s 125 of the Code of Criminal Procedure, 1973 and the said proceeding, ultimately, was compounded by the parties and the victim-Sonal returned to her matrimonial home. The prosecution has alleged that the appellants were taunting on her chastity and character. But it has come on record that no such allegations were made in the maintenance application which was preferred in the Court of learned Judicial Magistrate, First Class at Manavadar.

(iv) It appears prima facie that under the instigation of the friend of the complainant, the complainant had lodged the said complaint at Kotda Sangani Police Station. It is also argued that the evidence as to cruelty led by the prosecution if is taken as it is, it is in two different shades. One set of evidence is against the appellant No. 1-husband of the victim-Sonal and the second shade covers the conduct of appellant Nos. 2 and 3. Though, the appellants were tried for two major offences i.e. offence punishable u/s 498A read with Section 114 of the Indian Penal Code. All the appellants have not been sentenced for similar period, meaning thereby, the learned trial Judge himself was convinced that the gravity of the offence is comparatively less. The operative portion of the judgment imposing sentence by itself speaks that the case of the prosecution is somewhat different qua the appellant No. 1-husband than the other two appellants i.e. parents of appellant No. 1 (parents-in-law of the victim-Sonal). Shri Jayesh Dave, learned Counsel appearing for the appellants has drawn the attention of the Court to one important aspect that the learned trial Judge could have discussed in detail the contradictions and conflicts in evidence examined to prove the charge of cruelty. The judgment only simply refers to the story told by the witnesses and admissions made by them in the cross-examination and as such there is no legal and convincing finding as to why the evidence of a witness having number of contradictions and material improvement, requires to be believed. For short, according to Shri Jayesh Dave, learned Counsel appearing for the appellants, the judgment and order of conviction and sentence is bad and such judgment and order of conviction and sentence cannot sustain.

3.1. Ms. D.S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, has submitted that the incident in question has occurred on 9th August, 2003 at about 9-30 a.m. The parents of the victim-Sonal were informed. They are residing at a reasonable good distance and after their arrival in the hospital, they must have come to know that the victim-Sonal had succumbed to the injury sustained by her. Her body was handed over to the

hospital authority by the police for autopsy. They may not be aware about the details of police report made earlier. It is in evidence that they had not participated in the funeral ceremony of their daughter Sonal. This conduct of the parents of the victim-Sonal speaks about their dissatisfaction about the family members of the appellants. They had stayed at the place of their friend Keshubhai. The F.I.R. was thereafter lodged with Kotda Sangani Police Station at 4-00 a.m. on 10th August, 2003. This can be said to be a delayed F.I.R., but considering the totality, including possible mind-set of the complainant, this delay may not be given more weighted. According to her, though there is no sufficient cogent evidence to link the appellants with the crime punishable u/s 306 of the Indian Penal Code considering the probability that the deceased might have committed suicide under some frustration or some socio-physical dissatisfaction. Some small quarrel also might have taken place regarding her proposal to visit her parental home for celebration of "Raksha Bandhan" as usual.

3.2. It is in evidence that the victim-Sonal was regularly going to her parental home on this occasion. Prior to this the day of "Raksha Bandhan", her father had been to her house and he had invited her to stay with them. The said suggestion was not well-accepted by the appellant No. 1 and it was said by the appellant No. 1 that he was under heavy workload and the father of the victim-Sonal was further told that the victim-Sonal would come to her parental home on the day of "Raksha Bandhan" itself. Comparing the days as per the Gregorian calendar and Indian Samvat Calendar, it appears that the incident in question took place just prior to three days of the day i.e. "Raksha Bandhan". In the year 2003, the festival of "Raksha Bandhan" was falling on 12th August, 2003. It is very likely that the victim-Sonal might not have been permitted to go her parental home and that frustration also perhaps could have led her to extreme. So, comparing the totality and other aspects emerging from record, the Court can re-evaluate the evidence, keeping in mind the scheme of Section 374 read with Section 386 of the Code of Criminal Procedure, 1973.

4. It is further submitted by Ms. D.S. Pandit, learned Additional Public Prosecutor, that there is some evidence of cogent nature for linking the appellants with the crime punishable u/s 498A of the Indian Penal Code. It emerges from the evidence that as the victim-Sonal was not treated properly, she had been to her parental home for long, and she was compelled to initiate proceedings for maintenance contemplated u/s 125 of the Code of Criminal Procedure, 1973. The parental side of the victim-Sonal was expecting that the appellants would go to fetch the victim back to her matrimonial home, and there is no logic in the submissions made by Shri Jayesh Dave that there is any conflict in the evidence in this regard. Whether victim-Sonal had left her matrimonial home at her sweet-will or the appellants had forced her to go to her parental home, is not a matter of much relevance, but it was possible for the learned trial Judge to infer that some disharmony had taken the parties to separation for some time, otherwise a married woman would not like to stay with her parents and would initiate proceedings making allegations against her in-laws. So, the element of ill-

treatment has come on record. It is not on record that for how much period the brother of the victim had been there at the residence of the in-laws of the victim-Sonal. At one place, it is on record that Bhavesh-brother of victim-Sonal used to visit the house of his sister only to have meals, and at some other place, it is on record that the said Bhavesh had stayed with the in-laws of the victim-Sonal. Non-examination of this witness would not destroy the case of the prosecution because the concerned learned Public Prosecutor was not bound to examine each witness to prove the cruelty. Two witnesses have been examined. If the death was accidental, the parents would not have even thought to go to Police Station and lodge a complaint at odd hours. The suspicion which had cropped up in the mind of the parents of the victim-Sonal and their subsequent behaviour is a conduct relevant and in the investigation the Police found that there is some truth in the complaint lodged with Kotda Sangani Police Station. The impeachments were made against the victim-Sonal and she was tortured for not conceiving a child. Merely because certain attempts were made by the family members of the appellant No. 1, and mainly the appellants so that the victim-Sonal can conceive a child, would not get them acquitted from the charge of cruel treatment. In such matters, the family members of the appellant No. 1 are found more responsible, is the experience of the society. So, the learned trial Judge has rightly linked the appellants with the crime punishable u/s 498A of the Indian Penal Code.

5.1 Shri Jayesh Dave, learned Counsel appearing for the appellants, has taken me through the nature of contradictions and the impeachments which were made against the appellant No. 1 and the rest of the accused persons. The appellant Nos. 2 and 3 are the father-in-law and mother-in-law of the victim-Sonal. The appellant No. 1 was dealing in compact discs, popularly known as "CD." and the family of the accused persons was a lower middle class family, and they were residing in a small house.

5.2 It is further submitted that neither at the time of drawing panchnama of scene of offence the Police had noticed any mark of violence nor at the time of performing autopsy any injury was found by the doctor who had performed post mortem. Meaning thereby, there was at least no physical torture to the victim-Sonal immediately prior to the incident. As mentioned earlier, after three days of the incident in question, there was a festival of "Raksha Bandhan" which falls on the full-moon day of holy month of "Shravan". The said day is celebrated from socio-religious angle. It is in evidence that none of the appellants had objected or resisted the wish of the victim-Sonal to visit her parental home on the day of "Raksha Bandhan". According to Shri Dave, the victim-Sonal might have been tempted by her father to join him so that she can stay with her parents for about 15 to 17 days. The evidence shows that the appellant No. 1 had expressed his negative opinion to the proposal and it is rightly submitted that nothing had happened which can be said to be unusual at the time when the appellant No. 1 refused to accept the proposal placed by his father-in-law, otherwise P.W. 2-father of victim, who has been examined vide Exh. 18, could have stated that on

that day the behaviour of the appellant No. 1 was found unusual.

5.3 It is further submitted that it is also not in evidence that the parents of victim-Sonal were informed that this time Sonal would not come to celebrate "Raksha Bandhan". If it is assumed that as the last hours or before a day or two, the appellant No. 1 might have said "no" to the victim-Sonal about her proposed visit to her parental home, but this conduct or resistance cannot be equated with mental cruelty punishable u/s 498A of the Indian Penal Code. It is very likely that because of the sensitivity or emotional attachment with the family members, the victim might have decided to commit suicide. No independent witness has been examined. So far as the allegations against the appellants are concerned, there are material contradictions.

5.4 It is further submitted that it has come on record that even there are contradictions as to the basic nature of allegations made against the appellants in the complaint as well as the allegations made in the maintenance proceeding, which was initiated by the victim-Sonal in the Court of learned Judicial Magistrate, First Class, Manavadar. It is in evidence that the said proceedings were terminated as the parties had compounded the matter in Lok Adalat organized at Manavadar by the District Legal Services Authority. If the appellant No. 1 had accepted during the conciliation proceeding, which might have taken place in the Lok Adalat that he would pay more attention to the victim-Sonal or now she will not have to complain again, would not make him a cruel husband because such a stand is being taken in all cases where the husband wants re-union at any costs to avoid the breach of marriage tie and/or apprehended liability to pay the amount of maintenance. The male members of the lower middle class families have a tendency to succumb to any proposal made during such conciliation proceedings.

6. There is enough force in the arguments of Shri Jayesh Dave that the allegation of cruelty and the commission of suicide made by the complainant, is based on suspicion, otherwise there was, as such, no conflict or quarrel between the appellant No. 1-husband and the victim-Sonal. Of course, the evidence has not been led specifically by the defence side, but the appellant No. 1 had got himself examined through a doctor for his personal satisfaction to ascertain about his physical fitness to become a father of a child. In absence of such legal evidence on record, it is not possible for this Court to comment on this part of submission. But the fact remains that the victim-Sonal was taken for required treatment to a Gynaecologist and curetting was also done. It is also clear from the evidence that the parents of the victim-Sonal were taken into confidence, otherwise P.W. 5-Shantaben, mother of the victim-Sonal, would not have been there in the hospital where she was being treated. P.W. 5-Shantaben has admitted that she was called and her daughter i.e. victim-Sonal, was treated by the doctor. Both these witnesses have admitted that they have made certain improvements at the time of deposing before the Court and it was not stated specifically in the maintenance proceeding that any of the appellants was impeaching on the

character of the victim-Sonal. The plain reading of the evidence of P.W. 2-Haribhai, P.W. 5-Shantaben and P.W. 7-Keshavlal, give an impression that the allegation of cruelty made against the appellants is made haphazardly and the same are too general in nature. The element of consistency is missing.

7. The another argument which has been advanced by Shri Jayesh Dave is that as the victim-Sonal was not able to conceive a child, she might be feeling frustrated and a lady under such frustration if is denied her customary privilege to visit her parental home on Raksha Bandhan so that she can tie "Rakhi" to her brother, may have led to such an extreme step. But such an incident would not make any of the appellants responsible for the cruelty which is made punishable u/s 498A of the Indian Penal Code. The compact discs are being sold comparatively more in number on festival days. Under the pressure of work, the appellant No. 1 may have said "no" to the victim-Sonal that this time he would not permit her to go. It is not in evidence but it is possible to infer that the females of our society who are not self-sufficient heavily depend upon the financial assistance that may be given to her either by husband or any other earning member of the family. Denial to provide financial assistance to the victim-Sonal by the appellant No. 1 whether would make him a cruel husband who can be punished for the offence punishable u/s 498A of the Indian Penal Code, is a question and the answer obviously would be in negative, because such denial depends on various aspects, including the inability to spare extra money. So, the prosecution is under obligation to lead evidence of cruelty either physical or mental which can take the victim to do something qua herself. It is settled legal position that some small unhappy or avoidable event or a small quarrel amongst the family members, and the husband and wife, is not the incident of cruelty. In the present case, there is no clinching evidence under which the appellants can be linked with the crime of offence punishable u/s 498A of the Indian Penal Code.

8. Of course, the panchas i.e. P.W. 3 and P.W. 6, of panchnama of scene of offence have turned hostile, but this panchnama has been proved by P.W. 14 ? S.P. Gausai, Head Constable of Kotda Sangani Police Station. The defence side has rightly placed reliance on the contents of the scene of offence panchnama drawn by this P.W. 14. Initially, one accidental death (A.D.) case was reported to Kotda Sangani Police Station. The station diary Entry No. 903 at Exh. 37 says that the Police Constable Ashokbhai, a hospital duty police, had intimated the Kotda Sangani Police Station that one Sonalben wife of Shailesh Jagatiya Kumbhar has been admitted for treatment on account of burns injury and the history given to the doctor is of accidental injury. As per the history given, the injured had sustained injury while preparing tea on a kerosene stove. The M. L. Certificate also confirms and corroborates to the details of the said entry. A copy of the entry and outdoor case papers were there on record. However, they have not been received in evidence as were not tendered by the prosecution. There is no evidence of Dr. Khebar who admitted Sonal in the hospital and recorded history. One Mukesh Lalji had brought the injured to the hospital. This Mukesh is the younger brother of the accused No. 1. He being the brother of the appellant

No. 1 obviously may not have been examined by the prosecution. But when the doctor who has performed autopsy has not stated in the deposition that the body of the deceased was having smell of kerosene or the clothes were also having smell of kerosene, and the injury which was found on the body of the victim-Sonal had some different characteristics and hairs, it is possible to argue that the prosecution has not satisfactorily proved that the deceased must have poured kerosene on her body. The panchnama of scene of offence corroborates this probable factual contingency. There was neither blackening on the ceiling of the room nor presence of amount of kerosene on the floor. The pieces of clothes which had fallen on earth eventually had also no smell of kerosene and these facts have been proved by P.W. 14 Police Constable Gosai, otherwise he would not have proceeded to investigate in the direction that the death is accidental and not suicidal.

9. For the sake of argument if it is accepted that such a grave injury normally would not be caused if the person gets blazed while preparing tea.

The posture of the victim-Sonal would be a sitting posture because there is no reference of standing kitchen in the panchnama. In that situation, the whole body would not have sustained injury of very high percentage, practically all over the body, even then the prosecution was supposed to prove that the act of suicide was the result of the abetment by the appellants or any one of them. When she was brought to hospital, it was about 11-20 a.m. The station diary entry says that the event had occurred at 9-30 a.m. So, during morning hours, the scope to have instigative conversation is very limited. No family member had sustained any burn injury, including the appellant No. 1. But unless it is proved by prosecution that they were present, mainly the appellant No. 1 was present, it would be erroneous to jump to a conclusion that the appellant No. 1 must have abetted the offence.

10. On the contrary, it is in evidence that he (accused No. 1) was not present at the time of incident, he must have resumed his daily work to earn his livelihood as it was a peak season for him. It appears to the Court that while leaving the house the appellant No. 1 might have given some negative current to the wish of the victim-Sonal about her proposed visit to her parental home and such a negative trend of the appellant No. 1 as well as the old frustration which was there in her mind, perhaps might have led her to this extreme step of committing suicide.

11. To bring home the charge of offence punishable u/s 306 of the Indian Penal Code, the overt act or omission has to be established which can be said to be an abetment and such an act of abetment must have some nexus with the act of suicide. The proximity of time is a very relevant factor. There is no such evidence on record and, therefore, the appellants should be given benefit of doubt. It is necessary to discuss the evidence of each witness examined during the course of trial. Of course, the F.I.R. in question cannot be said to be a delayed F.I.R., but an F.I.R. given on suspicion should not be given undue weightage merely

because one young lady has lost her life in the incident. The Court also cannot ignore that the incident has occurred after about 2 1/2 years of the compromise which had taken place in the maintenance proceeding and during this period, it appears that she was treated by the doctor so that she can conceive the child. Thus, the totality of facts and circumstances of the case which emerges from record takes me to a conclusion that the judgment and order of conviction and sentence recorded by the learned trial Judge is based on incorrect appreciation of evidence. The learned trial Judge has mainly read the examination-in-chief of three material witnesses i.e. mother and father of the victim as well as the friend of father of the victim, and has not appreciated the other aspects which were also very relevant before linking the appellants with the crime. For short, the finding recorded by the learned trial Judge is required to be reversed by giving the appellants benefit of doubt.

12. In view of aforesaid observations and discussion, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 21st February, 2006 passed by the learned Presiding Officer, 11th Fast Track Court, Gondal in Sessions Case No. 8 of 2004, is hereby quashed and set aside. The appellants-orig. convicts are hereby ordered to be acquitted from all the charges levelled against them in respect of the offences in question. The appellant No. 1-orig. accused No. 1 is hereby ordered to be set at liberty forthwith, if he is not required by the Jail Authority for any other purpose. The bail bonds of appellant Nos. 2 and 3 stand discharged. The amount of fine, if any paid, be refunded to each of the appellants on proper identification.