
(2009) 07 GUJ CK 0095
In the Gujarat High Court
Case No : Criminal Appeal No. 1314 of 2004

Shri Jaidevsinh Chudasma

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 306, 398A, 498A

Citation : (2009) 07 GUJ CK 0095

Hon'ble Judges : Z.K. Saiyed, J;K. S. Jhaveri, J

Bench : Division Bench

Advocate : Ashish M. Dagli, for the Appellant; Manisha Lavkumar Shah, APP, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—The present Criminal Appeal, u/s 374(2) of the Code of Criminal Procedure, has been preferred by the appellant - original accused, challenging the Judgment and order dated 14.07.2004, passed by the learned Additional Sessions Judge, Fast Track Court No. 9, Bhavnagar, in Sessions Case No. 105 of 2003, whereby the learned Judge has convicted the appellant - accused for the offence punishable under Sections 498(A) and 306 I.P. Code.

2. The facts of the prosecution case is that complainant deceased Laxmiba @ Minaba was the wife of appellant - accused. It is alleged that on 5.2.2003 at 11.00 O'clock there was some quarrel between them and after that the accused had gone out of the house. Thereafter the complainant - wife of the accused poured kerosene on her body and set on fire on herself and committed suicide. During the treatment she died. The police filed the complaint and registered the offence against the accused for the offence punishable u/s 306, 498(A) I.P. Code. The police recorded the statement of witnesses, drew the panchnama, the post mortem was done and thereafter the accused was arrested. On completion of investigation the charge-sheet was filed before the learned J.M.F.C. As the

offence was absolutely triable by a Court of Sessions, the learned J.M.F.C., has committed the said case to the Court of Sessions which was registered as Sessions case No. 105 of 2003.

2.1 Thereafter, the charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

2.3 The prosecution has examined following witnesses to prove the case against the accused:

- (1) Takhubha Balvantsinh, Exe. Magistrate, Exh. 15;
- (2) Dr. Jagsharan Ramdev Srivastava, Exh. 18;
- (3) Sahdevsinh Viramsinh, brother of deceased, Exh.20;
- (4) Narendrasinh Viramsinh Gohil, Ex. 21;
- (5) Kanakba Viramdevsinh Gohil, mother of decd. Exh.36;
- (6) Prabhatba Sahdevsinh, Exh. 37;
- (7) Rameshbhai Khumanbhai Vasava, Exh. 38;
- (8) Jaydevsinh Kashalsinh Gohil, Exh.40;
- (9) I.O. Arvindbhai Bababhai, Exh.45;
- (10) Prof. Vinayakrao Patil, F.S.L., Ex. 44;

2.4 The prosecution has also produced following documents:

- (1) Yadi for Dying Declaration, Ex. 16;
- (2) Dying Declaration of Laxmiba, Exh.17;
- (3) Post Mortem Note Ex. 19;
- (4) Yadi for investigation, Exh. 22
- (5) Yadi for investigation of offence, Exh. 23;
- (6) Yadi to F.S.L. Exh.24;
- (7) Details of visit of F.S.L., Exh.25;
- (8) Panchnama of Muddamal from F.S.L., Exh. 26;
- (9) Inquest Panchnama, Exh.27;
- (10) Dying Declaration form Exh. 28;
- (11) Yadi for Post Mortem, Exh. 29;
- (12) Arrest panchnama of accused, Exh.30;
- (13) Yadi for receipt of P.M., Exh. 31;

- (14) Yadi regarding muddamal sent to FSL, Exh.32;
- (15) Letter of FSL, Exh. 33;
- (16) Report of FSL, Exh. 34;
- (17) Copy of Police Station Diary, Exh.39;
- (18) Yadi to get copy of Dying Declaration, Exh. 42;
- (19) Panchnama of scene of offence, Exh. 43;
- (20) Yadi to add Section 306, Exh. 44;

3. After appreciating the documentary as well as oral evidence the learned Additional Sessions Judge, Fast Track Court No. 9, Bhavnagar, has vide Judgment and order dated 14.07.2004, held the accused guilty for the offence punishable u/s 498(A) I.P. Code and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs. 500/- i/d to undergo simple imprisonment for two months. Learned Judge also held the appellant - accused guilty for the offence punishable u/s 306 I.P. Code and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 500/- i/d to undergo simple imprisonment for two months. The learned Judge ordered that both the sentence to run concurrently.

4. Against the said Judgment and order of conviction dated 14.07.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 9, Bhavnagar, in Sessions Case No. 105 of 2003, the appellant - original accused has preferred this Criminal Appeal.

5. We have heard learned Advocate Mr. Ashish Dagli for the appellant - accused and learned APP Mrs. Manisha Lavkumar Shah, appearing for the respondent - State, at length. We have also gone through the papers and the Judgment and order passed by the trial Court.

6. Learned Counsel Mr. Dagli has contended that the trial Court has based the conviction on the F.I.R. (Exh.41) and the Dying Declaration (Exh. 17). He has further contended that on a close scrutiny of evidence it has come on record that at the time of incident the accused was not present in the house and there are serious contradictions in the Dying Declaration and the complaint. In the Dying Declaration the victim has stated that nobody was present at the time of incident and in the complaint she has stated that her daughter was present.

6.1 Mr. Dagli has contended that the appellant - accused is serving as Driver in the Municipal Corporation and at the time when the incident had occurred he had gone for service. He also contended that the span of his marriage life was more than 14 years and out of their wedlock they have three children and, therefore, there is no question of any harassment by the appellant.

7. Learned APP for the respondent - State has supported the Judgment of the Sessions Court and submitted that the learned Judge has rightly convicted the

accused after considering the facts and evidence on record. Therefore, no interference is required to be called for.

8. The fact which is emerging from the record is that the deceased has committed suicide in absence of the appellant - accused. The incident has occurred on 5.2.2003, whereas the victim has died on 9.2.2003. The victim survived almost for four days and ultimately she died because of septicaemia. It is also fact that, out of wedlock, the appellant - accused and the deceased have three children and, therefore, it is presumed that they have cordial relation, but on a weaker moment the victim has committed suicide.

8.1 The trial Court has, while appreciating the evidence, not considered the contradictory version of the deceased in the complaint as well as in dying declaration. In the dying declaration she has not disclosed the name of the accused and what was the harassment and what was the cause of committing suicide is also not borne out.

8.2 We have also considered the evidence of P.W. 5 - Kanakba (Exh. 36), mother of deceased. She has clearly deposed that the relations between the deceased and her husband were cordial. She has also deposed that the deceased had not complained her about her husband and mother in law. She has also deposed that her daughter was unconscious and she was not in a position to talk. This witness has not supported the case of the prosecution and she has turned hostile.

9. Keeping in mind the fact that the star witnesses have not supported the case of the prosecution and also the fact that there are serious contradictions in the complaint and the dying declaration, in our considered opinion dying declaration is not worth reliable and is untrustworthy. Therefore, without any independent corroboration, it would not be just or proper to rely upon the dying declaration. It is pertinent to note that even the mother of the victim has not supported the prosecution case and she has clearly stated that relation between the husband and wife was cordial. The marriage span is about 14 years and three children were born during wedlock. It has also come on record that the appellant - accused was not present at the time of incident and that he had gone for service. There is no other direct, cogent and convincing evidence to link the appellant with the crime. The chain of circumstances is also not complete so as to unequivocally lead to presume guilt of the accused and inconsistent with the innocence of the accused. Under the circumstances, since the prosecution has failed to prove the guilt beyond reasonable doubt and grave suspicion has arisen and, therefore, benefit of doubt is required to be given and accused appellant requires to be acquitted.

9.1 In that view of the matter the order of conviction recorded by the learned trial judge is required to be quashed and set aside.

10. Accordingly, this Appeal is allowed. The Judgment and order dated 14.7.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 9, Bhavnagar, in Sessions Case No. 105 of 2003 is hereby quashed and set aside.

The appellant - accused is acquitted from all the charges levelled against him.
His Bail Bond shall stand cancelled. Fine, if paid, shall be refunded to him.

Record & proceedings be sent to the trial Court.