

(2009) 05 GUJ CK 0066
In the Gujarat High Court
Case No : Criminal Appeal No. 521 of 1988

State of Gujarat	Vs	APPELLANT
Ambalal Maganlal Darji and Another		RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, 378
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2009) 05 GUJ CK 0066

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

Bench : Division Bench

Advocate : R.C. Kodekar, app, for the Appellant; N.S. Desai, for Opponent's 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of acquittal dated 6th February 1988 passed by the learned Additional Sessions Judge, Nadiad in Criminal Appeal No. 22 of 1986 whereby the appeal was allowed and the accused have been acquitted of the charges levelled against them by setting aside the

2.0 It is stated that respondent No. 2 Vasumatiben has expired on 12th October 2002. True copy of the death certificate has been produced on record. Hence the appeal qua respondent No. 2 abates and is accordingly disposed of.

3.0 The prosecution case, in a nutshell, is as under:

3.1 Earlier Devyani was married at Amreli and she was harassed by her previous husband. Therefore divorce was obtained by mutual consent. Thereafter Dvyani married to Ramjibhai on 13th may 1984 at Mahemadavad. After marriage she was staying with Ramjibhai, the original accused No. 1. According to the complaint Ramjibhai was giving mental torture and was harassing Devyani. On

13th June 1984 her brother Jaysukhbhai Ramjibhai had gone to Mehmadabad to the house of accused No. 1. He met Devyani and had taken meals. At that time she narrated her ordeals and cruel behavior and harassment by the accused. On 3rd July 1984 Devyani sprinkled kerosene on her body and set her fire. She was removed to the hospital, dying declaration was recorded and ultimately Devyani has succumbed to burn injuries.

3.2 In pursuance of the aforesaid incident a complaint was lodged by brother of Devyani on 8th August 1984. The offence was registered and the investigation was carried and ultimately chargesheet was filed against the accused for offence under Sections 306 and 498A of Indian Penal Code. As the offence was exclusively triable by the Court of Sessions, the same was committed to Sessions Court, Kheda at Nadiad which was numbered as Sessions Case No. 53 of 1985.

3.3 The accused pleaded not guilty and therefore the trial was commenced. The accused No. 1 was examined at Exh.87 and one Ritaben Pravinchandra was examined at Ex.88, the divorce deed between the accused No. 1 and his previous wife Vimalabern was produced at Exh.89.

3.4 At the end of trial the learned Assistant Sessions Judge, Nadiad, vide judgement and order dated 27th February 1986 convicted the accused No. 1. for offence punishable under Sections 306 and 498A of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/-, in default to undergo rigorous imprisonment for six months for the offence punishable u/s 306 of Indian Penal Code and further sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default to undergo rigorous imprisonment for two months for the offence punishable u/s 498A of Indian Penal Code and both the sentences were ordered to run concurrently. The accused No. 3 has been given benefit of Probation of Offenders Act u/s 360 of Cr.P.C. and she was released on probation of good conduct on her entering into bond with one solvent surety of Rs. 2000/- for two years.

3.5 Feeling aggrieved by the judgement and order dated 27th February 1986 passed in Sessions Case No. 53 of 1985 by the learned Assistant Sessions Judge, Nadiad, the original accused filed Criminal Appeal No. 22 of 1986 before the Sessions Court, Kheda at Nadiad. After hearing the parties the learned Additional Sessions Judge, Nadiad, vide judgement and order dated 6th February 1988 allowed the said appeal, set aside the conviction and sentence and acquitted the original accused of the charges leveled against them. It is against the said judgement and order that the present appeal has been filed.

4.0 Mr. R.C. Kodekar, learned APP appearing for the appellant State submitted that there was ample evidence against the respondents to connect them with the crime in question. He submitted that the appellate court has committed an error in disbelieving the evidence of the prosecution even though there is a categorical evidence which proves the guilt of the respondents. He submitted that the deceased Devyaniben was subjected to cruelty to such an extent that

she has committed suicide and the respondents had abetted the offence of committing suicide.

5.0 At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of *M.S. Narayana Menon @ Mani Vs. State of Kerala and Another*, , the Apex Court has narrated about the powers of the High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgement of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

5.1 Further, in the case of *Chandrappa and Others Vs. State of Karnataka*, the Apex Court laid down the following principles:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

[4] An appellate court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

[5] If two reasonable conclusions are possible on the basis of the evidence on

record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

5.2 Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

5.3 Even in a recent decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgement delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.

5.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. state of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.5 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasons, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, wherein it is held as under:

& This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

5.6 Thus, in case the appellate court agrees with the reasons and the opinion

given by the lower court, then the discussion of evidence is not necessary.

6.0 We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant.

6.1 The appellate court has discussed each and every issue minutely and threadbare.

6.2 At the outset it is required to be noted that the accused No. 1 is serving as teacher at village Sankhej, about 12 kilometers away from Mahemadabad. When the incident took place, except Devyani, there was none present in the house. It was in morning hours and the accused No. 1 was in school. One person had gone to school to call him since Devyani had sustained serious burn injuries. In fact he had gone straightaway to hospital from the school. It has also come on record that the neighbours noticed fumes of smoke coming out of the house and they broke open the doors and went inside and they found that Devyani was lying on the floor in burnt condition. Therefore she was taken to the hospital. The appellate court has noted the events as follows:

6.3 On the day in question at about 10.50 am Devyani committed suicide and at about 11.20 he was brought to Nagar Panchayat Hospital of Mahemadabad by the neighbours. At 11.25 the medical officer informed the PSO of Mahemadabad police station on phone and an entry was made. The PSO visited the hospital and recorded dying declaration at about 1205 hours. He then wrote a Yadi to Executive Magistrate of Mehmedabad who receives the same at 12.30 hours. Mr. N.B.Parikh, Executive Magistrate reached the hospital and engaged in recording dying declaration at 12.55 pm. Devyani died at 2.45 and at 3.05 pm the Medical Officer informed about the same to PSO of Mahemedabad Police Station. The PSO therefore registered an accidental death entry being Entry No. 9/84. Thereafter inquest panchnama was drawn and postmortem was performed at 5.30 pm. Panchnama of scene of offence was drawn and statements of various witnesses were also recorded by 7.30 pm.

7.0 After considering the entire scenario the appellate Court found that looking to the evidence led by the prosecution, there is not a single iota of circumstantial evidence. The case of prosecution was based mainly on documentary evidence and to some extent oral evidence to prove the ingredients of cruelty. The prosecution has mainly relied on the following documents:

[a] A letter dated 3.7.1984 written on one examination note book, Exh.33.

[b] Postal envelope in which said letter Ex.33 alleged to have been received by Jayaben, mother of the deceased.

[c] Dying Declaration Exh.64 of the deceased recorded by the Executive Magistrate Shri N.B.Parikh.

[d] A.D.D. Exh.75 deceased recorded by PSI Shri G.A. Saiyed - Exh.74.

7.1 The letter is dated 3.7.84 and on the very same day the letter appears to have been written before committing suicide. It is required to be noted that Arpit, step son of deceased was staying in the same house. The investigating agency has not collected any evidence as to where he was. There is nothing on record to show as to whether after writing the letter she had gone personally for dropping the said letter in post box and the whereabouts of Arpit. The marriage took place on 13.5.1984 and Devyani committed suicide on 3.7.1984. Therefore there was a span of about 52 days in between the date of marriage and the date of death of Devyani. It has also come on record that after marriage the couple had gone for Honeymoon for about 16 to 17 days. After deducting these days it is evident that she hardly stayed for 27 days at matrimonial home. Certain letters were produced on record by prosecution, but there is nothing on record to point out that Devyani was unhappy at her in-laws house. She has not stated anything in the letter about the alleged mental cruelty caused to her for the demand of dowry articles. In those letters she had not made any complaint against her husband or family members. Exh.33 is the only letter making complaint about mental cruelty. Even Exh.33 does not point out any demand of dowry items. The handwriting expert was examined and the appellate court found that he has not compared "figures" and dissimilarities found by him in the document. The Appellate Court has come to the conclusion, after discussing various aspects of the matter, that it is not safe to say that the writer of Exh.33 and 34 is the same person who has written document Exh.35 to 38. There is nothing on record to show that the appellate court was wrong in arriving at such a conclusion. It was not proved that the letter in question was written by Devyani and she has posted the same on the day of the incident. Apart from that certain other letters produced on record do not indicate any harassment on the part of the accused and it can be presumed that had it been the case she would have definitely written something about such cruelty at one or the other point of time. There was no such complaint in letters Exh.41 to 45. In this regard the appellate court has found as under:

The marriage of Devyani with accused No. 1 took place on 13.5.84. This letter Exh.43 was written exactly after one month and from this letter we find that there was nothing wrong for Devyani at the house of accused No. 1 till 13.6.84. Had accused tortured or harassed Devyani immediately from 2nd day of marriage, then she would have certainly stated something adverse against accused in any of her letters and had she written such letters then there would be some type of rebuke in any of the letters Exh.43 to 45 and therefore letter Exh.33 does not inspire confidence that this letter Ex 33 was written by Devyani and if it was so wrong then the complaints stated in said letter are not such that it can be said that acts of accused were falling under the definition of cruelty which is given in explanation below Eec.498A IP Code.

7.2 It is also required to be noted that there was a delay in giving this letter

Exh.33 to the police authorities which was not explained at all. This letter was kept by Jaysukh till it was seized under the Panchnama Exh.18. If it was received on 6.7.1984 no prudent person would keep it with himself without adverting it to the police machinery immediately.

7.3 Further the alleged offence is said to have been committed on 3.7.1984 and the complaint has been lodged on 8.8.1984. There is an inordinate delay in lodging the complaint which has caused a serious doubt about the prosecution case.

7.4 As regards the dying declaration, the dying declaration Exh.75 is first in point of time and the second one at Exh.64 was recorded by the Executive Magistrate. The first dying declaration does not bear either the signature or thumb impression of the deceased. At the time of recording this dying declaration only Dr. Oza was present, but he has not put any endorsement below the said dying declaration Exh.75 to the effect that Devyani was in a fit condition to give statement. Therefore the appellate Court has found that the said dying declaration was not reliable. Looking to the evidence of Dr. N.B. Bhatt at Exh.68 it was found that Devyani was not in a fit state of mind to give her statement because her condition was serious and she was under the shock and her condition was deteriorating. It was also stated that she had never come out from shock till she died. This dying declaration is in a narrative form and it does not bear certificate of doctor to show that Devyani was in a fit state of mind and therefore there are various infirmities in Exh.75. We completely agree with the reasoning of the appellate court on this aspect.

7.5 Even Exh.64 does not bear the certificate of doctor that Devyani was in a fit state of mind, but the doctor has only put a certificate to the effect that as hand of Devyani was burnt she was not in a position to put the signature or thumb impression. This is in question and answer form and the doctor has not put her certificate and it is not the first in point of time. Therefore the appellate court has rightly not accepted the same.

8.0 Thus, at the time of incident the accused No. 1 was not present in the house. There was no explanation from any side about the suicide. There is no evidence that there was any intentional assistance given by any of the accused to Devyani. There is also no evidence on record that the accused were inducing Devyani to die and therefore it cannot be said that there was an evidence of instigation. We also find that the evidence put forth by the prosecution was not trustworthy to hold the accused No. 1 liable for offences for which he was tried.

8.1 Thus from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

8.2 Mr. Kodekar, learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

9.0 In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

9.1 We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

10.0 We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.