
(2015) 02 GUJ CK 0081
In the Gujarat High Court
Case No : Criminal Appeal No. 842 of 1995

State of Gujarat

APPELLANT

Vs

Amrutbhai K. Jadav Turi

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 34, 498(A), 498-A

Citation : (2015) 3 DMC 223

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : L.R. Poojari, A.P.P., for the Appellant; Paresh A. Patel for R.N. Jaskia, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J—Heard learned Advocate for the respective parties. By way of this Appeal, the appellant State has felt aggrieved by the judgment and order of acquittal of the accused dated 30.6.1994 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 75/1992. The accused (i.e. husband of the deceased) was acquitted of the offences punishable under Sections 498(A) and 306 of the Indian Penal Code.

2. The case in brief is as under:

"The daughter of the complainant Manjula was married with the present accused for nearly 7-8 years, out of the said wedlock two children were born. It is alleged that the accused herein used to torture the deceased; the accused was alleged to be not giving money for household expenses. After the 2nd child was born, the deceased went to live with her parents. Thereafter, the deceased was brought to her matrimonial home. It is alleged that even during this period, frequent fights had surfaced on the issue of money between the deceased and the accused herein.

On the ill-fated day of 15.8.1992, it is alleged by the complainant that the

accused and his relatives had informed her that Manjula is serious and that they should come immediately. It is stated by the complainant that Manjula had sprinkled kerosene on her body and thus, committed suicide.

The body of the deceased was taken to the Khambhat Hospital for postmortem. It is alleged that fed up of the constant harassment, the deceased committed suicide. The complainant filed a complaint in this respect and offences under the relevant sections of the Indian Penal Code were added.

The case was committed to the Court of Session, the trial was conducted against the accused. The learned Additional Sessions Judge passed the above order of acquittal."

3. The prosecution had examined witnesses and had relied on several oral and documentary evidences.

4. Learned Additional Public Prosecutor for the appellant-State Mr. L.R. Poojari has contended that the bruise marks on the body of the deceased shows that before she set herself ablaze, she was beaten. He has further stated that the finding of fact that the house was in a Kutcha" shed belies the Panchnama. The Panchanama categorically shows that it was not a "Kutcha" or temporary shed and therefore, the third plank of argument is that the Trial Court has committed an error in holding that, the complainant and the PW 2 are relatives, i.e. the mother and the father of the deceased. An independent witness has testified against the accused and, therefore, the benefit of doubt which is given is contrary to the factual scenario. He has further submitted that the fact that there was a compromise between the deceased and the accused and after the compromise, the deceased was sent to the matrimonial home, which shows that she was earlier also harassed and was suffering cruelty within the meaning of Section 498(A) of the Indian Penal Code and because of that harassment, she was forced to commit suicide.

5. As against the above, learned Advocate Mr. Paresh A. Patel for learned Advocate Mr. R.N. Jaskia for the respondent submitted that in the cross examination of the Doctor, he has accepted that if a person sets oneself ablaze, then during that period and thereafter also, such bruise marks could be found, which were found on the body of the deceased. He has taken this Court to the cross-examination of the brother of the complainant and mother of the deceased and the fact that there was no harassment is proved before the learned Trial Judge. Therefore, this Court may not interfere with the well reasoned judgment of Trial Court.

6. This is an Acquittal Appeal challenging the acquittal and this Court will have to appreciate the factual aspect on the touchstone of the decisions of this Court and the Hon"ble Apex Court.

7. In a recent decision of the Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC

755 : (2007) 3 SCR 507 , the Court has reiterated the powers of the High Court in such cases. In paragraph 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 judgment 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."

8. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, AIR 2007 SC 3106 : (2007) 10 JT 421 : (2007) 10 SCALE 358 : (2007) 7 SCC 625 : (2007) AIRSCW 5589 : (2007) 6 Supreme 49 . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

9. Even in a recent decision of the Apex Court in the case of Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, AIR 2013 SC 321 : (2013) 1 Crimes 8 : (2013) 1 JT 626 : (2013) 1 SCALE 95 : (2013) 2 SCC 89 : (2013) AIRSCW 339 : (2013) 1 Supreme 88 , the Apex Court in Para 4 has held as under:

"4. It is not in dispute that the Trial Court, on appreciation of oral and documentary evidence led by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since Counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate Court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the Court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could

take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan Vs. Sohan Lal and Others, (2004) CriLJ 3842 : (2004) 5 JT 388 : (2004) 5 SCALE 86 : (2004) 5 SCC 573 : (2004) SCC(L&S) 1078 : (2004) 2 SCR 480 Supp : (2004) 2 UJ 1118 : (2004) AIRSCW 4321 : (2004) AIRSCW 5560 : (2004) 6 Supreme 669 : (2004) 3 Supreme 404]."

10. It is a settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasoning when the Appellate Court is in agreement with the reasons assigned by the Trial Court acquitting the accused. On the touchstone of these judgments, the principles enunciated therein go to show that the finding of fact recorded in the said impugned judgment cannot be said to be perverse and this view is based on facts. The prosecution having failed to prove the three main ingredients for bringing home the charges namely demand for dowry and inducement.

11. At this stage, it is necessary to reproduce Sections 498-A and 306 of the Indian Penal Code which reads as under:---

"498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

306. Abetment of suicide--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

12. 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 catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, AIR 2006 SC 3366 : (2006) 3 BC 433 : (2006) 132 CompCas 450 : (2006) 6 CompLJ 39 : (2006) CriLJ 4607 : (2006) 3 CTC 730 : (2006) 6 JT 72 : (2006) 6 SCALE 393 : (2006) 6 SCC 39 : (2006) 3 SCR 124 Supp : (2006) AIRSCW 4652 : (2006) 5 Supreme 547 , the Apex Court has narrated 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 (sic)ing an appellate power against a judgment 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."

13. Having heard learned Advocates and perusing the record of the case and on the touch of the aforesaid decisions, the following emerge:

"(a) The prosecution has not proved that there was demand for dowry or harassment which would fall within the purview of Section 498(A) of the Indian Penal Code.

(b) The accused himself was a Class IV employee. He had children, he led a happy married life. To abet the death of his wife, i.e. the deceased, it cannot be said that the prosecution has proved beyond reasonable doubt to show that the judgment is perverse.

(c) Even on facts, this Court is of the considered view that the death did not occur due to any mental harassment by the accused."

I am supported in my view by the latest decision of the Apex Court in the case of Kuldeep Kaur Vs. State of Uttarakhand, (2014) 4 CCR 350 : (2015) 1 Crimes 1 : (2014) 3 DMC 779 : (2015) 1 JCC 620 : (2014) 10 SCJ 508 .

In view of the above, the judgment and order dated 30.6.1994 of the learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 75/1992 is confirmed. This Criminal Appeal fails and is dismissed. Bail and bail bond stands cancelled.