

(2016) 07 GUJ CK 0086
In the Gujarat High Court

Case No : Criminal Appeal No. 1497 of 2006 in Session Case No. 73 of 2001

State of Gujarat

APPELLANT

Vs

Arjunbhai @ Nathabhai Haribhai

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, Section 306

Citation : (2017) 1 GLR 76

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. L.B. Dabhi, APP, for the Appellant No. 1; Mr. Ruturaj Nanavati, Advocate, for the Respondent No. 2; Unserved-Expired (N), for the Respondent No. 1

Final Decision : Dismissed

Judgement

Mr. R.P. Dholaria, J.(Oral) - The appellant State of Gujarat has preferred the present appeal under section 378(1) (3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 29.10.2004 rendered by learned Assistant Sessions Judge, Junagadh in Sessions Case No. 73 of 2001.

2. The short facts giving rise to the present appeal are that though deceased Bhanuben was residing separate, the accused persons have retained the ornaments and other items which were given in the marriage to Bhanuben. It is alleged that on demand of the said items by Bhanuben, the accused used filthy abuses and beaten and extended harassment, due to which on 9.6.2001 deceased Bhanuben poured kerosene on her person and succumbed to the burnt injuries. Accordingly, the complaint to that effect came to be lodged against the respondents.

3. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the charge sheet against the respondents accused. The charge was framed against the accused. The accused pleaded not guilty to the

charge and claimed to be tried.

3.1. In order to bring home the guilt, the prosecution has examined the witnesses and also produced documentary evidences.

3.2. At the end of the trial, after recording the statements of the accused under section 313 of the Cr.P.C and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

5.1. Mr. L.B. Dabhi, learned APP appearing for the appellant State has reiterated and urged the grounds mentioned in the memo of appeal. Learned APP has taken this Court through the paper-book and evidence on record and argued that there is dying declaration as well as complaint of the victim which clearly indicate that the present respondents have tortured the deceased by refusing to hand over the golden ornaments due to which, she has committed the suicide. He submitted that dying declaration is also getting corroboration from the oral evidence of the parents though learned trial Court did not believe the same. In his submission, therefore, learned trial Court ought to have convicted the accused and hence, learned trial Court has failed to appreciate the evidence on record and wrongly recorded the judgment of acquittal which is required to be reversed and the respondent is required to be convicted, as such.

6. On the other-hand, Mr. Nanavati, learned Advocate for the respondents accused has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned trial Judge is just and proper. Mr. Nanavati further submitted that there is no iota of evidence to link the accused with the crime. In his submission, therefore, in view of the evidence on record, it cannot be said that the learned trial Judge has committed any error in passing the impugned order acquitting the accused, and therefore, the present appeal deserves to be dismissed.

7. This Court has heard Mr. L.B. Dabhi, learned APP for the appellant State and Mr. Nanavati, learned advocate for the respondents accused.

8. Respondent No. 1 ? Arjunbhai Nathanbahi Bagda had died on 10.3.2009 during pendency of the appeal and his death certificate is also on record. Therefore, the appeal qua respondent No. 1 stands abated.

9. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book. As per the prosecution version, deceased Bhanuben was daughter-in-law of the surviving respondent and on 8.6.2001 at about 9.00 O'clock while the deceased demanded her golden ornaments, at that time, the respondents refused to hand over the same, severally beaten and taunted her, due to which, the deceased poured kerosene on her person on 9.6.2001 and committed suicide and, thereby the respondents committed the offences punishable under sections 489, 306, 323 and 504 of IPC.

9.1. In order to bring home the guilt against the accused, the prosecution has examined several witnesses. PW 3 ? Jivanbhai Dahyabhai who is father of the deceased has deposed that deceased Bhanuben was his daughter and she got married with the son of the respondents. The witness stated that while his daughter was in the hospital, his daughter informed to her mother that her mother-in-law refused to hand over the golden ornaments, beaten and taunted her, due to which, she committed suicide. In his cross examination, the witness has admitted that while his daughter was living, she never complained as regards to any sort of harassment or cruel treatment to her from the respondents. The witness has also admitted that as his daughter has not stated anything as regards to harassment and cruelty meted out to her.

9.2. PW 4 Shantaben Jivanbhai, who is mother of the deceased, has deposed that deceased Bhanuben was her daughter and she got married with Manoj. The witness has stated that on the day of incident, she visited her daughter in the hospital and at that time, Bhanuben has informed her that she requested the respondents to hand over her golden ornaments, but the respondents refused, beaten and also told her to die, due to which, Bhanuben committed suicide. In her cross examination, the witness has admitted that while she visited the hospital, deceased Bhanuben was unconscious. The witness also admitted that the respondents who are in-laws of the deceased are residing separately and the deceased was also residing separately with her husband. PW 5 - Naresh Jivanbhai, who is brother of the deceased, has also deposed in the similar line to that of his parents.

9.3. Over and above the aforesaid oral evidence, the prosecution has also produced dying declaration recorded by the Executive Magistrate at Exh.50 as well as complaint alleged to have been recorded by the Head Constable on 9.6.2001. In the dying declaration as well as the complaint, the deceased has narrated that on 8.6.2001 at about 9.00 O'clock in the morning, she visited the place of her in-laws, at that time, she demanded her golden ornaments for which the present respondents refused to hand over but asked to her to die, due to which, she has committed suicide.

9.4. In order to prove the aforesaid dying declaration, Executive Magistrate Kailashpuri has been examined. He has deposed that on 9.6.2001 upon receiving the call from the hospital, he visited the hospital and recorded dying declaration

of deceased Bhanuben who was undergoing treatment in burns ward. The witness stated that he recorded the dying declaration at about 12.00 noon and also obtained certificate indicating that she was conscious. However in the cross examination, the witness has admitted that the deceased has narrated that she was residing separately from her in-laws. The witness has also admitted that he has not obtained certificate of mental fitness from the Doctor who medically treated the deceased.

9.5. In view of the aforesaid oral as well as documentary evidence in the nature of dying declaration, learned trial Court has recorded the finding that even if the conduct on the part of the respondents in not handing over the golden ornaments and even used the word "to die" by the present respondents cannot be described to be an act of getting excitement to commit suicide as such. Indisputably, in-laws were residing at a far away place from the place of deceased Bhanuben and she was residing separately with her husband and the dispute might be as regards to handing over of golden ornaments. In view of the above nature of evidence, it reveals that the aforesaid incident of handing over of golden ornaments is solitary incident and nowhere from the evidence on record, it is forthcoming that the deceased was continuously or persistently being harassed due to which she committed suicide. The solitary incident, as stated above, even if may be believed to be true, then also, it is very difficult to believe that due to which the provisions of section 306 of IPC can be attracted for convicting the respondents for the offences as alleged against them.

9.6. So far as the dying declaration in the nature of complaint as well as dying declaration recorded by the Executive Magistrate is concerned, admittedly, at the time of recording the aforesaid both the dying declarations of deceased Bhanuben, certificate of mental and physical fitness was not obtained from the Doctor who medically treated deceased Bhanuben and as per the oral admission of the mother of deceased Bhanuben, while she visited the hospital, deceased Bhanuben was unconscious. In this view of the matter, learned trial Court has rightly not believed the aforesaid two dying declarations. Under the circumstances, learned trial Court has rightly acquitted the respondents accused considering the nature of evidence on record.

10. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

11. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondents of the charges levelled against him. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

12. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.