
(2015) 01 GUJ CK 0026
In the Gujarat High Court
Case No : Criminal Appeal No. 1047 of 2004

State of Gujarat	Vs	APPELLANT
Birbalsingh Chensingh Vaghela		RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Evidence Act, 1872 — Section 113(A), 113-A
Penal Code, 1860 (IPC) — Section 302, 306, 34, 498-A

Citation : (2015) 01 GUJ CK 0026

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P., for the Appellant; Ankit Y. Bachani and S.M. Gohil, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The State has preferred this appeal under Section 378 of the Criminal Procedure Code against the judgment and order dated 20.3.2004 rendered by the learned Additional Sessions Judge, Banaskantha at Deesa in Sessions Case No. 107 of 2002. The said case was registered against the present respondent original accused for the offence under Sections 498-A, and 306 of the Indian Penal Code.

2. The case of the prosecution is that the complainant Jaravarsinh Kanchusinh Chauhan has lodged the FIR being C.R. No. I-08/2002 at Panthavada Police Station alleging inter-alia that on 30.01.2002 at about 4.00 o'clock, the daughter of the complainant Monba, made telephone call at the residence of elder brother of the complainant Dhupsinh stating that "kindly come earlier as soon as possible Birbalsinh is beating me severely". This message was transmitted to the complainant through his wife and as a result of which, the complainant along with Virsinh Bhavansinh arrived at Nandona village by Jeep and met Monba. At that time Monba repeatedly told the complainant that "As my

elder Brother-in-law (Jeth) Rajusinh won in the election of the Panchayat and invited me for dinner at the well of the field, Birbalsinh has beaten me, as they were not at good terms during the election time". As the Complainant met Chensinh at his residence and discussed about the ill-treatment meted out to the Monba by Birbalsinh, at that time Chensinh demanded jewellery, one buffalo but the complainant was not in a position to satisfy the demands of the accused persons and the complainant denied the same and requested to send Monba at his home, however, the accused person declined to send her with him. As a result of which, the complainant along with Virsinh returned back at their village and discussed the matter with the brother and his wife. Thereafter, on 30.01.2002 at about 4 O" clock, a telephone message was received from village Nandona at the residence of the brother of complainant Dhupsinh stating that "Monba has fallen herself into well, kindly intimate to Joravarsinh". After hearing this news, complainant along with his family reached at the Village-Nandona and saw the dead body of Monba. It was found that she was in a dead condition and had two blows over the head and blood was clotted into the hairs. There were some injuries over the neck region as well as right knee. The complainant alleged that accused Birbalsinh after inflicting the fatal blows to deceased Monba thrashed her into the well and thereafter ran away from the scene. Accordingly, the complaint came to be filed.

3. Thereafter, investigation was carried out and charge sheet came to be filed against the accused in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions. Thereafter, charge came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4. In order to bring home the charges against the accused, prosecution has examined following witnesses:

5. The prosecution has also produced documentary evidence on record, which are as under:

6. Thereafter, after filing closing purshis by the prosecution, further statement of the accused person under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The accused denied the case of the prosecution and submitted that a false case is filed against him.

7. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned Judgment, acquitted the respondent-accused. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 20.3.2004 rendered by the learned Additional Sessions Judge, Banaskantha at Deesa in Sessions Case No. 107 of 2002, the appellant-State has preferred the present appeal before this Court.

8. Ms. Bhatt, learned APP appearing for the State has submitted that the learned Judge ought to have appreciated that there was both physical and mental torture to the victim at her matrimonial place and there is sufficient evidence which goes

to show that there were enough circumstances in which a lady could commit suicide on account of physical and mental torture. She also submitted that the medical evidence on record suggest that the injuries sustained by the deceased could be caused by sharp cutting weapon. She also submitted that the learned Sessions Judge ought to have appreciated the fact that the proximate reason of the beating of the deceased was the election in the village, wherein the deceased was called upon by the Rajusinh, who happened to be her Brother-in-Law (Jeth) and thereafter the deceased jumped herself into well and ended her life. She further submitted that the learned Sessions Judge has erroneously came to the conclusion that there is some variation in the evidence led before the trial court.

9. Learned APP Ms. Bhatt submitted that the learned Sessions Judge ought to have appreciated the marriage span of the deceased with the accused person while deciding the case. In the instant case, the marriage span is only seven months and it is an admitted fact that the relations between the spouse were not cordial and the deceased was complaining to her parents about the physical and mental torture meted out to her at the end of the accused person at one pretext or another. She also submitted that the learned Sessions Judge ought to have considered this as an important factor under Section 113-A of the Evidence Act. When the marriage life span is within seven years then in that case, the presumption is always against the accused person, but the learned Judge did not discuss the legal provisions in the judgment and only upon his conjectures and surmises came to the conclusion erroneously that the evidence is not believable.

10. Ms. Bhatt also submitted that the learned Sessions Judge ought to have appreciated the deposition of complainant, Joravarsinh, who was examined at Exh. 27. He has categorically stated that the accused person was ill-treating the deceased and that was cause for ending the life of the deceased. She also submitted that the learned Sessions Judge without appreciating the evidence led before the trial court, erroneously discussed the statement recorded by the Investigating Officer during the course of investigation, which are not to be taken as evidence and are only used for the contradicting the prosecution witnesses during the course of cross examination. She further submitted that the learned Sessions Judge has erroneously jumped on the conclusion that since there are many variations in the statements recorded before the police, story of the prosecution could not be believed. She also submitted that the learned Sessions Judge came to the conclusion that the story of the prosecution could not be proved that because of the injury caused to the deceased over head by the accused person, she expired. Without admitting the above referred observation of the learned Sessions Judge the fact remains that deceased ended her life within the span of seven months after her marriage, which itself is a factor to be decided against the accused person under Section 113(A) of Evidence Act.

11. On the other hand, Mr. Ankit Bachani submitted that there is no infirmity in the impugned order. He submitted that the lower court has rightly appreciated the evidence on record and acquitted the respondent of the charges levelled

against him. He submitted that there are contradictions in the statements of different witnesses. He, therefore, submitted that the impugned judgment may not be interfered with and it may be confirmed.

12. Before dealing with the submissions of either side, it is necessary to reproduce Sections 498-A of the Indian Penal Code which reads as under:--

"498-A. 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." 13. Having perused the evidence and other material on record, the following aspects emerge:--

"(i) That the accused had nowhere demanded dowry nor the accused was in any way responsible for causing mental harassment.

(ii) The learned Judge while discussing the evidence has held that it was the father of the accused, who had demanded certain things, however, this is not borne out from the evidence, save and except the evidence testified on oath before the trial Court and the police authorities in their oral testimony have belied this fact.

(iii) If anybody can be said to be guilty, they are the family members but not the accused.

(iv) The learned trial Judge has also relied on the decision of the Honourable Supreme Court in the case of Dharmendrasinh @ Mansing Ratansinh Vs. State of Gujarat, , wherein it was observed as under:

"As observed earlier the discrepancy in regard to the lodging of the FIR is certainly there and the conduct of the Investigating Officer in carrying out the investigation of the case has also been commented upon by the trial court but we are of the view that the consequences of such discrepancies of defective or doubtful investigation is not necessarily only one leading to discredit the main prosecution case if the prosecution evidence inspires confidence and the circumstances lead to such a conclusion and the prosecution story rings true. No doubt that in that event would be necessary to evaluate as to what extent such faulty investigation or discrepant statement on certain facts relating thereto, shall cause damage to the prosecution case as a whole." (v) In view of above, I concur with the judgment of learned trial Judge as far as finding regarding offence under Section 498-A are concerned."

14. As far as offence under Section 306 of the Indian Penal Code is concerned, before dealing with it, it is necessary to reproduce the provision, which is as under:

"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." 15. From the evidence on record, it can be said that the accused and the deceased were having cordial relations. This fact is also borne out from the evidence of one of the witnesses, who was close relative of the deceased. The learned Judge has elaborately discussed this aspect in its judgment to hold that when going to Nandona village, father of the deceased observed that the accused and the deceased were living happily and there were no disputes between them. The submission of Ms. Bhatt that the accused was having suspicion about character of the deceased and that is why she was forced to commit suicide is contrary to the evidence on record and the witnesses belied this. The submission that the accused tried to kill the deceased also falls flat because of the evidence of independent witnesses, who stated that the accused was not armed with any weapon. The medical evidence shows that the injuries sustained by the deceased can be caused by her falling in the well, therefore, also offence under Section 306 cannot be said to have been proved. The findings of fact would not permit this Court to take a different view than the one taken by the learned trial Court.

16. Therefore, in my view, learned Judge has rightly observed that from the evidence on record it could not be proved that an offence under Section 498-A is committed and ingredients of Section 306 of the IPC also could not be established. It cannot be said that because of the respondent's provocation, instigation or abetment the deceased had committed suicide. Therefore, learned Judge has rightly observed that the prosecution could not prove its case beyond reasonable doubt.

17. In a recent decision of the Apex Court in the case of State of Goa Vs. Sanjay Thakran and Another, , 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 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." 18. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh Vs. Ram Veer Singh and Others, and in Girja Prasad (Dead) by LRs. Vs. State of Madhya Pradesh, . Thus, the powers which this Court may exercise against an order of acquittal are well settled.

19. 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, , 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 reappreciate 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, " 20. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent - accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. I do not find any cogent reason to interfere with the impugned decision as it cannot be said to be either perverse or not borne out from the facts of the case. The State has not been able to persuade this Court to take a different view in this matter. Hence, this appeal sans merit and is required to be dismissed.

21. In the result, the appeal is hereby dismissed. The impugned judgment and order dated 20.3.2004 rendered by the learned Additional Sessions Judge, Banaskantha at Deesa in Sessions Case No. 107 of 2002, acquitting the respondent-accused, is hereby confirmed. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith. Bail bond, if any, stands cancelled.