
(2015) 10 GUJ CK 0106
In the Gujarat High Court
Case No : Criminal Appeal No. 550 of 2006

State of Gujarat	Vs	APPELLANT
Gulshankumar Subhashchandra Sharma and Others		RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 114, 498A

Citation : (2015) 10 GUJ CK 0106

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : H.L. Jani, APP, for the Appellant; M.M. Saiyed, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J—The present Appeal is directed against the judgment and order rendered in Criminal Case No. 2399 of 2002 by the learned Judicial Magistrate First Class, Ankleshwar dated 27.10.2004 recording acquittal of the Respondents - Accused persons for the offence under Section 498A read with Section 114 of the Indian Penal Code.

2. The facts of the case briefly summarized are that the complainant was married to the Respondent No. 1 and was staying in the joint family where she was ill-treated for the demand of dowry as stated in the complaint. The complainant has also stated that in order to save her marriage she used to continue and made an effort to save her marriage. However, she went to her parental house between July 2001 to March 2002 and thereafter again she returned to the matrimonial house. However, again she was ill-treated and she was driven out when the parents had visited her house. Therefore, the complaint was lodged being FIR No. 89 of 2002 with Patel Nagar GIDC Police Station, Ankleshwar for the offence under Section 498A read with Section 114 IPC.

3. After the investigation was over, the charge sheet was filed and the trial court

proceeded with the trial.

4. After hearing the learned APP as well as learned Advocate for the defence, the learned Judicial Magistrate First Class, Ankleshwar recorded the acquittal for the reasons stated therein. It is this judgment and order which has been assailed by the Appellant -State of Gujarat in the present Appeal inter alia on the ground that the court below has committed an error in appreciating the evidence and failed to appreciate the aspect of harassment and cruelty as stated by the complainant in her complaint which has been corroborated by the complainant in her testimony at Exh.24. He further submitted that the complaint of the complainant regarding harassment for the demand of dowry and ill-treatment has been corroborated by the other witnesses father, mother and the matrimonial uncle. Therefore it was submitted that the incidents are required to be considered that there is a constant harassment as stated in the complaint. Learned APP Shri Jani submitted that she had returned to her parental home and thereafter again she was brought back and again the same treatment continued and she was driven out and therefore the judgment and order recording acquittal is not justified.

5. Learned Advocate Shri M.M. Saiyed appearing for the Respondents - Accused persons has stated that the complainant has stated about the harassment but it has been admitted that some of the aspects have not been stated in her statement before the police and therefore it is an improvisation. He submitted that similarly it has been admitted by other witnesses - father and mother in their testimony at Exh.27 and Exh.26 that they had not initially stated to the police. It has been categorically stated by the mother in her testimony at Exh.26 admitting that the complainant has not earlier stated about the harassment or the ill-treatment and she has not even stated in her statement before the police. Learned Advocate Shri Saiyed also submitted that as it is evident no independent witness like neighbour has been examined though it is the case of the prosecution that there was constant harassment. He submitted that though it is stated that she was beaten she has never been referred to the police and no injury certificate or medical certificate are produced. He therefore submitted that in the totality of the facts and circumstances the findings and the conclusion recording acquittal may not be disturbed. He submitted that considering the scope of acquittal appeals, the court may not disturb the findings of acquittal.

6. In view of this rival submissions, it is required to be considered whether the present appeal deserves consideration.

7. In view of the submissions made and having perused the material and evidence and the testimony of the witnesses though the complainant has stated about the harassment and ill-treatment, the fact remains that it has been admitted that she has not complained to anybody. Further, the father and mother have admitted that she has not conveyed to them earlier. The mother in her testimony at Exh.26 has admitted that she has not disclosed in her statement before the police about such ill-treatment or harassment. All the witnesses are

relatives or the close relatives. Therefore there is a improvisation. Further, no independent witness like neighbour or anybody has been examined and as rightly submitted there is no medical evidence with regard to any injury. There is a specific case about the cross complaint and the fact that the complainant was more educated than the Respondent No. 1 - husband which was the source of the matrimonial discord. It is in this background, the reasons recorded by the court below recording acquittal cannot be said to be erroneous which would justify the interference. This court is in broad agreement with the findings and the conclusion arrived at recording the acquittal which does not call for any interference.

8. Further, the Hon"ble Apex Court has laid down the broad guidelines with regard to the approach in such acquittal appeals referring to the scope of Section 378 of Cr.PC. The Hon"ble Apex Court in a judgment reported in *Murugesan and Others Vs. State through Inspector of Police*, AIR 2013 SC 274 : (2013) 1 JCC 118 : (2013) 1 RCR(Criminal) 791 : (2012) 10 SCALE 378 : (2012) 10 SCC 383 : (2012) AIRSCW 5627 and *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 has made the observation that if the view taken by the court below is possible, the findings of acquittal may not be disturbed. Again in this judgment reference is made to the earlier judgment of the Hon"ble Apex Court reported in *Chandrappa and Others Vs. State of Karnataka*, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 laying down the broad guidelines that if the view taken by the court below on appreciation of material and evidence is a plausible view, the same may not be disturbed merely because the other view is also possible. It is in this background the view taken by the court below cannot be said to be erroneous as it is a plausible view. Therefore, the reasons recorded for the acquittal are justified and it does not call for any interference and the present Appeal deserves to be dismissed and accordingly stands dismissed. The findings and the conclusion arrived at by the court below recording the acquittal is confirmed and the present appeal stands dismissed.