

(2015) 03 GUJ CK 0065
In the Gujarat High Court
Case No : Criminal Appeal No. 249 of 1994

State of Gujarat

APPELLANT

Vs

Harishchandra Jivatsinh Thakore and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

Citation : (2015) 03 GUJ CK 0065

Hon'ble Judges : V.M. Pancholi, J.; Akil Abdul Hamid Kureshi, J.

Bench : Division Bench

Advocate : C.M. Shah, A.P.P., for the Appellant; R.J. Goswami, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Akil Abdul Hamid Kureshi, J.—The appeal is filed by the State challenging the judgment of acquittal dated 25.11.1993 rendered by the Additional Sessions Judge, Godhra, in Sessions case No. 120/1993.

2. Briefly stated, prosecution version was that Varsha, niece of the complainant, Nanubhai Kohyabhai Parmar, was married to accused No. 1 some four years before the date of the incident. Accused No. 2 and 3 were her father-in-law and mother-in-law respectively. The husband and her said relatives used to ill-treat the lady for deficiency in household work and also on dowry demands. As per exh. 1, between the night of 9th and 10th February, 1992, the accused beat her up and then throttled her. Due to such harassment, Varsha consumed poisonous pesticide due to which she died. The accused were therefore, charged with offences punishable under sections 498A, 304B and in the alternative section 302 read with section 34 of the Indian Penal Code.

3. Vijendra Nanalal Jain, PW-1, exh. 12, was the medical officer at Civil hospital, Godhra. He had carried out the postmortem of the deceased on 11.2.1992. He had produced postmortem note at exh. 13. In his report, he had noted down the

following external injuries:

"(1) Abrasion on It side of face on medial of mouth of 0.5 cm x 0.5 cm- oblique in direction

(2) Frothy blood discharge from nose.

(3) Stool passed from anus and focal matter around lower part of back thigh."

His internal examination revealed the following injuries:

"Neck : There is congestion on It side of neck in sub cut tissue, muscle and carotid sinus" He gave his tentative opinion on the cause of death as "cardiac arrest due to compression of carotid sinus with hypoxia". Upon receipt of report of the FSL, he gave his final opinion and confirmed that the cause of death was due to cardiac arrest due to compression of carotid sinus with hypoxia. The doctor had also taken viscera samples and sent it for FSL analysis. He had found a foetus of 20 to 24 weeks old in the uterus. According to him, the lady would have died 24 to 28 hours before the postmortem. He pointed out that the FSL report of the viscera was negative indicating no presence of poison in the stomach.

In the cross examination, he agreed that there were no marks of external injury on the neck.

4. Nanubhai Kohyabhai Parmar, PW-2, exh. 14, was the first informant. He was the uncle of deceased Varsha. According to his deposition, Varsha used to live with him. She was married three to four years before the date of the incident with accused No. 1. She had one daughter of two years. From her in-laws place, Varsha would often visit Mithali where he had agricultural fields and a house which was looked after by his younger brother and at Godhra where he was residing. On 10.2.1992, he had gone to Mithali. At 9:00 in the morning, after getting down at the bus stand when he was walking on the road, he met Varsha's husband's uncle who informed him that Varsha and her husband had quarrelled. Varsha has got injured on the head and then in the morning she had consumed pesticide. She is being taken to the hospital. He went to his house at Mithali. His family members had come to know about the incident and had already been preparing to go to Varsha's house. He also prepared to leave. After walking a short distance, he met another uncle of Varsha's husband who told him that Varsha has died and, therefore, they have taken the tractor back. His daughter Vaishali was of the same age as of Varsha. Varsha therefore, used to visit his house regularly. She would inform him about the ill-treatment by the husband, the father-in-law and the mother-in-law. She used to complain that the husband was beating her up. Sometimes she would also leave her house. Even a day before the incident, Varsha had likewise come with her daughter. She had complained that her husband had beaten severely two days back. Her in-laws had been taunting her, asking her to bring clothes and a helper from her house. He had persuaded Varsha to go back. After the incident, he suspected that

Varsha was murdered. He therefore, went to the police station and lodged a complaint.

In the cross examination, the defence brought number of improvements and contradictions in his defence as compared to his police statement. Though he did not agree to many of them, such contradictions have been established through the evidence of the police witnesses. Apparently, in the police statement, he had not narrated that Varsha's husband's uncle had told him about the fight between the husband and the wife the previous night, during which Varsha had got injury on the head and that next day she had consumed pesticide and that later at 10 O'clock another uncle of Varsha's husband came and told him about the death of Varsha. In the FIR also, it is not stated that Varsha and Vaishali were of the same age because of which Varsha would come to the house very frequently at Godhra and narrate about the harassment from the accused. He admitted that in his such statement he had not mentioned about Varsha coming to his house leaving the matrimonial home or that she had complained about severe beating by husband a couple of days before the incident and that husband's parents were taunting her to get more clothes and helper from her house. He had agreed that previously no complaint about dowry demand was made. In the FIR exh. 15, which was recorded at 13:45 hours on 10.2.1992, this witness had stated that for about three years, Varsha's family life was normal, after which her husband, father-in-law and mother-in-law used to harass her about household work; husband used to beat her; Varsha often used to come to his house due to such reasons and complain about harassment and beating. Importantly, his statement mentions about Varsha having come to his house only a day before the incident.

5. Udesinn Kohyabhai, PW-3, exh. 16, was the father of Varsha. According to him, the marriage life of his daughter was satisfactory for one and half years after which the husband and in-laws started harassing her. He had agreed to give a chest at the time of marriage. He however, could not arrange (funds) for the same. Regarding this her father-in-law and mother-in-law used to pick up quarrels frequently. He was serving at Vadodara and would come to Mithali for agricultural work almost every week or 10 days. Six months before the incident, Varsha had come to his house and complained about beating for household work and for not fulfilling the demands. Even two months before the incident, she had come to Mithali and complained about harassment for household work and for not providing the chest. She complained that her husband used to beat her. She again came 25 days before the incident.

In the cross examination, this witness also made several improvements and contradictions which was established. Apparently in the police statement, he had not mentioned about the promise to give chest at the time of marriage and for his failure to provide the same, the in-laws of Varsha were harassing her. He had also not mentioned about Varsha's visit to Vadodara six months before complaining about the ill-treatment or even about her visiting two months prior

to the incident. He admitted that in the police statement he had stated that when he asked his daughter whether her husband, father-in-law and mother-in-law ill-treated her, she had stated that nobody is harassing me.

6. Ratibhai Kohyabhai, PW-4, exh. 17 was the another uncle of Varsha. He was residing at Mithali. According to him on 10.2.1992 between 9:30 and 10:00, Varsha's husband's uncle came there and told him that Varsha had consumed pesticide and they are taking her to the hospital. His elder brother Amarsinh met on the way to the bus stand and told him that Varsha has already died. They went to Varsha's house. He asked Varsha's father-in-law who told him that Varsha has consumed pesticide because her husband had scolded her about the work. During three to four years of marriage, Varsha came to Mithali in a huff on three to four occasions. She used to complain about the ill-treatment by father-in-law and mother-in-law for household work and agricultural work. Her father-in-law had demanded a chest for the son at the time of marriage. Since they could not provide the same, the accused used to taunt her regularly. About 20 days before the incident also, Varsha had come to Mithali.

In the cross examination of this witness also, number of improvements were established. Apparently, the police statement did not mention about the father-in-law and mother-in-law taunting her about household work and agricultural work or about the promise to give a chest at the time of marriage. He admitted that in his statement dated 11.2.1992, he had stated that Varsha's father-in-law had merely stated that husband had scolded Varsha, he does not know anything else.

7. These are important witnesses. The FSL report did not indicate any poison in viscera ruling out the possibility of consumption of pesticide.

8. This in the nutshell is the evidence on record.

9. On the basis of such evidence, the trial Court found insufficient evidence to convict any of the accused. In fact, the trial Court referring to the medical jurisprudence of Modi and the external and internal injuries noted down by the doctor carrying out the postmortem, ruled out homicidal death altogether. He in fact, concluded that the death in all probabilities could be accidental. With respect to the allegations of harassment and dowry demand, he referred to the deposition of three important witnesses noted above and found number of contradictions and improvements. Even in the versions of different witnesses inter-se, he found number of inconsistencies. The learned Judge therefore, acquitted the accused of all the charges.

10. At the outset, we may record our disagreement with the conclusion of the learned Judge that the death was accidental and not homicidal. In the process learned Judge clearly discarded and threw overboard important medical evidence where Dr. Jain, PW-1, who had carried out the postmortem had opined that the death was due to cardiac arrest due to compression of carotid sinus with hypoxia. He had given such tentative report awaiting the outcome of analysis of viscera to rule out the presence of poison in the stomach. Once viscera report

was negative, he confirmed his opinion about the cause of death. Thus the death of the young lady was clearly due to throttling. She was a healthy young lady in early 20s. She had one child of two years. She was carrying another foetus. Without there being anything on record, it was simply not possible to hold that her death was accidental. This was not even the suggestion of the defence.

11. However, this conclusion by itself would not permit us to convert the judgment of acquittal into one of conviction unless we find any evidence on record to link any of the accused with the commission of crime. In this respect, as it would unfold as we analyse the evidence, the prosecution failed to lead any worthwhile evidence. Both on the count of harassment and dowry demand and on the count of linking any of the accused with the homicidal death of Varsha, there was no worthwhile evidence. In fact, the investigation itself left much to be desired. As noted, according to the medical opinion, death was due to compression of carotid sinus with hypoxia. This was duly supported by internal injuries on the neck which the doctor noted in the postmortem report which suggested congestion on the left side of neck in the tissue muscle and carotid sinus. However, there was no further evidence to link any of the accused to this act. It is not even been established that Varsha received such injuries in the night of 9th and 10th February 1992. Whether she received injuries inside the house or elsewhere is not clear. Even the time of death could not be ascertained with any precision. We may recall the postmortem was carried out at 10:00 am on 11.2.1992. The doctor opined that the death must have occurred between 24 to 48 hours before the postmortem. This is too wide a range to narrow down the point of death with any degree of certainty. Thus first and foremost, it was not established that death occurred during the night time. Secondly, it was not established that the death occurred inside the house. Thirdly, the prosecution has also not brought any evidence on record to suggest that the house was occupied by Varsha only with her husband and father-in-law and mother-in-law. Whether they were residing in the joint family and the house was shared by other members, is not clear. None of the witnesses who could have easily thrown some light on these aspects of the matter stated anything before the Court. None of the neighbours who could have easily thrown light about the events and who could have brought important evidence on record, were examined. Thus no further circumstances were brought on record with the aid of which any of the accused could be brought closer to the crime.

12. It is well established that in a case resting solely on circumstantial evidence, conviction can be recorded only if all important circumstances are established on record and such circumstances form a complete chain of events leading unerringly to only one possibility of involvement of the accused to the exclusion of any other hypothesis to the contrary. In the present case, there are no circumstances which would link the accused with the crime.

13. Coming to the question of harassment and dowry demand, we may recall that the witnesses complained about ill-treatment to Varsha on the count of her

household work and agricultural work and also because Varsha's father could not meet the promise which he made at the time of marriage of providing a chest. In this respect also all the witnesses have given rather inconsistent versions. Nanubhai Kohyabhai Parmar, P.W.-2, never stated before the Court about the promise and demand of chest. Though Udesinn Kohyabhai, PW-3, father of Varsha, did bring this theory in his deposition, in his police statement there was no such mention of his promise of providing chest and of Varsha's trouble from the accused since he could not do so. This is also a case of Ratibhai Kohyabhai, PW-4, another uncle of Varsha. He referred to the promise and demand for chest but had failed to mention in his police statement.

14. Likewise regarding the cause of Varsha's other harassments also, these witnesses have given rather inconsistent references. In some case, it is referred to as her shoddy household work, in some cases her inability to do agricultural work and in some cases it is referred to as the demand for getting chest and clothes and a helper from her house. Such allegations therefore, are not believable and cannot form the basis for conviction that too unless the Court below on fair analysis of the evidence on record, acquitted all the accused.

15. With regard to the smooth marriage life also all witnesses have given different versions. Nanubhai Kohyabhai Parmar, P.W.-2 who claims to be closest to Varsha as her foster-father and a de facto guardian, did not refer to the initial period of marriage being happy though in the FIR he did state that initial period of about three years was normal. In the deposition he in fact, referred to Varsha's frequent troubles with husband and in-laws due to which she would often come over to his house. In contrast, Varsha's father Udesinn Kohyabhai, PW-3, claimed that only one and half years of initial period of marriage was normal, after which, Varsha's troubles started. It is well established that though in appeal against acquittal, the High Court has full powers to re-appreciate the evidence, judgment of acquittal would not be reversed merely because on such appreciation, another view seems possible.

16. For all the above reasons, Criminal Appeal is dismissed. Bail bonds are cancelled.