

(2014) 03 GUJ CK 0023
In the Gujarat High Court

Case No : Criminal Appeal No. 664 of 2003 and Criminal Revision Application No. 272 of 2003

State of Gujarat

APPELLANT

Vs

Mansukhlal Gordhandas Vajani

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(1)(3)
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 107, 114, 306, 498A

Citation : (2014) 3 GLR 2283

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P. and Nirav C. Thakkar, Advocate for the Appellant; M.J. Buddhbhatti and Monali Bhatt, A.P.P, Advocate for the Respondent

Judgement

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Rajesh H Shukla, J.—The present Appeal under Sec. 378(1)(3) of the Code of Criminal Procedure is directed against the impugned judgment and order rendered in Sessions Case No. 84 of 1994 by the learned Additional Sessions Judge, Jamnagar dated 20-1-2003 recording the acquittal for the charges of offence under Secs. 498A, 306 read with Sec. 114 of the Indian Penal Code. The facts of the case briefly summarised are as follows.

2. It is the case of the prosecution that the deceased niece of the complainant-uncle was married to the accused No. 2 ("A-2") and within the span of about two years of the marriage life, the deceased committed suicide as a result of the harassment and cruelty. It is the case of the prosecution that the accused No. 1 ("A-1") and accused No. 3 ("A-3"), who are the in-laws, used to impose restrictions, and it is due to such harassment regarding domestic work, there was a constant quarrel, which led her to commit suicide as the A-2 husband was also joining the A-1 and A-3.

3. The complaint was filed by the complainant-uncle which was registered as F.I.R. No. 378 of 1988 with the Jamnagar City "B" Division Police Station. It is required to be mentioned that earlier the entry for the accidental death being 46 of 1988 was also made with the Jamnagar City "B" Division Police Station. On the basis of the complaint given by the complainant, the investigation was made and the charge-sheet was filed for the alleged offence under Secs. 498A, 306 and 114 I.P.C. and it was tried by the learned Sessions Judge, Jamnagar after it was committed by the Court of Magistrate.

4. In order to bring home the charges levelled against the accused persons, the prosecution examined the witnesses including P.W. 3-complainant-uncle at Exh. 38, P.W. 4-maternal uncle at Exh. 122 and Aunti-P.W. 5 Exh. 124 and other witnesses.

5. After the recording of the evidence of the prosecution witnesses was over, the statement of the accused under Sec. 313 of Cr.P.C. was recorded.

6. After hearing the learned A.P.P. as well as learned Advocates for the defence, the learned Sessions Judge recorded the acquittal on appreciation of material evidence. It is this judgment and order, which has been assailed in the present appeal on the grounds stated in the memo of appeal.

7. At the outset, it is required to be mentioned that at the time of hearing of the appeal, the appeal stand abated qua respondent Nos. 1 and 3 (A-1 and A-3) (in-laws), and therefore, this Appeal would survive only qua respondent No. 2-husband (A-2).

8. Heard learned A.P.P. Ms. Monali Bhatt for the appellant-State of Gujarat and learned A.P.P. Mr. M.J. Buddhbhatti for the respondent No. 2/original accused No. 2.

9. Learned A.P.P. Ms. Monali Bhatt has referred to the testimony of the witnesses, including the testimony of P.W. 3-uncle at Exh. 38. It was submitted that he has specifically stated about the ill-treatment to the deceased. Learned A.P.P. Ms. Monali Bhatt has pointedly referred to the testimony of this witness about the nature of the harassment. It was submitted that this testimony is corroborated by the other prosecution witness P.W. 4-maternal uncle in his testimony at Exh. 122. Learned A.P.P. Ms. Bhatt submitted that he is the maternal uncle staying near the matrimonial home and the deceased used to visit her. Learned A.P.P. Ms. Bhatt submitted that the previous day she has visited the maternal uncle. It is corroborated by the testimony of the other witnesses. Similarly, learned A.P.P. Ms. Bhatt referred to the testimony of Aunti - P.W. 5 at Exh. 124 and the testimony of P.W. 8 at Exh. 134. Therefore, learned Ms. Monali Bhatt submitted that the main prosecution witnesses have supported the case of the prosecution with regard to the offence under Sec. 498A regarding the harassment and cruelty meted out to the deceased. Learned A.P.P. Ms. Bhatt submitted that as the span of marriage life is 2 years, it could attract the presumption. She has also referred to the letter at Exh. 39 and the other letters and the documents to support her

submission. It was submitted that the letters written by the deceased are further corroborated by the oral testimony of other witnesses regarding the harassment. She pointedly referred to the letter Exh. 39 and submitted that the Court below has failed to appreciate and deal with the contents of this letter. Learned A.P.P. Ms. Bhatt has pointedly referred to the testimony of witnesses for the offence under Sec. 498A and submitted that, as it transpires, A-2 (husband) has beaten the deceased and the harassment was caused regarding domestic work. Learned A.P.P. Ms. Bhatt has referred to and relied upon the judgment of the Hon'ble Apex Court reported in Vajresh Venkatray Anvekar Vs. State of Karnataka, and referred to the observations with regard to the attitude and the beating to the wife. She emphasised the observations:

"The tenor of the judgment suggests that wife-beating is a normal facet of married life. Does that mean giving one or two slaps to a wife by a husband just does not matter?..... Assault on a woman offends her dignity. What effect it will have on a woman depends on the facts and circumstances of each case."

Learned A.P.P. Ms. Monali Bhatt, therefore, submitted that the Court below has failed to appreciate the material and evidence in its proper perspective with regard to the alleged offence under Secs. 498A and 306 I.P.C. Learned A.P.P. Ms. Bhatt submitted that the deceased had a daughter of tender age and normally would not have committed suicide which is not appreciated by the Court below. Learned A.P.P. Ms. Bhatt has also referred to and relied upon the judgment of the Hon'ble Apex Court reported in Gurnaib Singh Vs. State of Punjab, .

10. Per contra, learned Advocate Mr. M.J. Buddhbhatti has referred to the testimony of witnesses and other evidence and submitted that the totality of the material and evidence is required to be considered. He submitted that as the appeal has abated qua respondent Nos. 1 and 3 (A-1 and A-3), it would survive qua respondent No. 2 (A-2) husband only. Learned Advocate Shri Buddhbhatti submitted that the allegations against the respondent-accused husband is that he had beaten her twice and that she was listening to the mother only (mavadia). Learned Advocate Shri Buddhbhatti has also referred to the testimony of witnesses including the testimony of P.W. 3 at Exh. 38 and pointedly referred to his testimony with the testimony of other witnesses. He submitted that as stated by the Aunti P.W. 8 (wife of the maternal uncle) in her testimony at Exh. 134, the deceased was going to the temple twice in a day and she used to meet the witness and they would talk for some time. She has also stated that the deceased used to visit her house from morning to evening. Similarly, learned Advocate Shri Buddhbhatti has referred to the testimony of P.W. 4 and submitted that he has also stated that the deceased used to visit twice in a week to his house. Therefore, learned Advocate Shri Buddhbhatti submitted that the allegation that there were many restrictions or she was not allowed to go out, cannot be believed or accepted at the face value. He further submitted that the entire evidence admittedly does not refer to any demand for any dowry or

harassment. Therefore, it only refers to the trivial quarrels over trivial matters regarding domestic work. He, therefore, submitted that such matrimonial discord or some trivial quarrels over domestic matters does not necessarily lead to suicide. He further submitted that there is no evidence about the beating by the husband just immediately before the act of suicide. He submitted that the time lag is relevant between the act of suicide and the instigation. He, therefore, submitted that the Court below has discussed at length on appreciation of material evidence with regard to the evidence, the change of the stand or the improvisation, and reached to the findings and conclusion regarding the acquittal. Learned Advocate Shri Buddhbhatti submitted that even the letter at Exh. 39 was not produced during the investigation, but it was subsequently produced during trial on the ground that it was sent by the father of the deceased, who is abroad. Learned Advocate Shri Buddhbhatti submitted that the genuineness of this letter also has been questioned, as it has not been produced at earlier point of time coupled with the fact that it has not been referred to the hand-writing expert. He submitted, that therefore, a quarrel at the matrimonial house over a domestic matters would not be a harassment amounting to cruelty. He submitted that the cruelty as defined under Sec. 498A has to be established by cogent evidence, which is absent in the present case. In support of his submission he has referred to and relied upon the judgment of the Hon''ble Apex Court reported in State of Rajasthan Vs. Yusuf, .

11. Learned Advocate Shri Buddhbhatti has referred to the scope of acquittal appeal and also submitted that if the two views are possible and if the view taken by the Court is plausible, normally the appellate Court would not disturb the finding. In support of his submission, he has referred to and relied upon the judgment of the Hon''ble Apex Court reported in Chandrappa and Others Vs. State of Karnataka, .

12. Learned Advocate Shri Nirav C. Thakkar for the appellant appearing in Criminal Revision Application No. 272 of 2003 has vehemently submitted referring to the evidence with regard to harassment and cruelty. He also submitted that such conduct/harassment is established by the prosecution. He has also adopted the submissions made by learned A.P.P. at length.

13. In view of the rival submissions, it is required to be considered whether the impugned judgment could be sustained or not.

14. From the scrutiny and analysis of the material and evidence and the reasons recorded by the Court below for acquittal, it cannot be said that the judgment is perverse or contrary to the material and evidence on record. From the entire material and evidence, it is evident that there are no allegations about any demand for dowry or any harassment on account of that. The main focus is with regard to the quarrel over the trivial domestic matters - like not allowing her to go out or having some restrictions, not helping the mother-in-law in her domestic work etc. There is also a case with regard to the beating by the husband on couple of occasions and supporting the mother, suggesting that he

would accept what the mother says. Therefore, on appreciation of this evidence, it reveals that there was a domestic quarrel over trivial matters regarding domestic work, the attitude of the in-laws (since they have expired, the appeal abates qua them). Therefore, as rightly submitted by learned Advocate Shri Buddhbhatti, the allegations qua the respondent-husband is beating in the past without any reference to any particular incident and believing or listening to mother. It is in this background, if the provisions for the offence under Sec. 306 are considered, it is evident that the basic ingredient regarding the intentional instigation are required to be proved or established. The word "suicide" has not been defined. The word "suicide" would mean the intentional killing of oneself. As per Concise Oxford Dictionary, 9th Edition, page 686, "A finding of suicide must be on evidence of intention. Every act of self-destruction is, in common language described by the word "suicide" provided it is an intentional act of a party knowing the probable consequence of what he is about. Suicide is never to be presumed. Intention is the essential legal ingredient." (Emphasis supplied). Therefore, while considering this aspect, the provisions of Sec. 306 read with Sec. 107 regarding the abetment and the suicide has to be considered. There has to be evidence, by which it could be said that the respondent-accused had instigated the deceased in such a manner or by creating the circumstances, which has led the deceased to commit suicide. The Hon"ble Apex Court in a judgment reported in Gangula Mohan Reddy Vs. State of Andhra Pradesh, has observed:

"The word "suicide" in itself is nowhere defined in Indian Penal Code, however its meaning and import is well-known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself." The provision of abetment is defined in Sec. 107 of the Indian Penal Code. The ingredients are required to be established. The Hon"ble Apex Court in this judgment has observed that "This Court in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), , had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down nay strait-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances."

15. Therefore, the perception about harassment causing mental agony would differ. The impact of the complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand the circumstances. In other words, each case has to be decided on its own facts to

decide whether the mental cruelty was established or not. A useful reference can also be made to the judgment of the Hon"ble Apex Court reported in Mohd. Hoshan and Another Vs. State of A.P., .

16. The Hon"ble Apex Court in a judgment reported in Ramesh Kumar Vs. State of Chhattisgarh, has made the observations:

"Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In this judgment, the Hon"ble Apex Court has referred to Sec. 113A regarding the presumption and for the purpose of cruelty under Sec. 498A I.P.C. has observed:

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation, therefore, must exist. A bare reading of Sec. 113A shows that to attract applicability of Sec. 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subject her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to "all the other circumstances of the case"."

Further, even with regard to letters at Exh. 39, in similar circumstances, in the aforesaid case the Hon"ble Apex Court has made the observation that the letter has to be considered and the inference could be drawn in light of the material and evidence adduced in the case.

17. Further, as there is no proximity between any so-called instigation and the actual act of suicide, the same cannot be the basis for conviction for offence under Sec. 306 I.P.C. Similarly, for the offence under Sec. 498A, the cruelty as provided in the Explanation to Sec. 498A has to be proved or established. It is well accepted that every domestic quarrel or the matrimonial discord would not be termed as cruelty. The Hon'ble Apex Court in catena of judicial pronouncements has made this position clear. A useful reference can be made to the judgment of the Hon'ble Apex Court reported in Vinod Kumar Vs. State of Haryana and Others, , and also the judgment of the Hon'ble Apex Court in case of Ramesh Kumar v. State of Chhattisgarh (supra) regarding Secs. 306 and 498A read with Sec. 114 I.P.C. for the cruelty. Similarly, the judgment of the Hon'ble Apex Court reported in Girdhar Shankar Tawade Vs. State of Maharashtra, , has referred to this aspect of legislative intention for the explanation of cruelty. It may be added that the harassment or the cruelty need not be in the form of only physical assault and even the mental harassment could also be within the purview of Sec. 498A. However, for that purpose again there has to be a harassment or ill-treatment of such a nature that drives a woman to commit suicide because she is left with no option or the life has been made so miserable. Therefore, again it depends on the facts and the material evidence in each case. In the facts of the present case, as discussed above, has broadly referred to the domestic quarrel over the trivial matters regarding the domestic work, and therefore, it would fall short of the requirement for the alleged offence both under Secs. 306 and 498A I.P.C. The reliance placed by learned A.P.P. Ms. Monali Bhatt on a judgment of the Hon'ble Apex Court in case of Vajresh Venkartay Anvekar v. State of Karnataka (supra) is required to be considered in background of the facts, as in this very judgment, it has been observed:

"There cannot be any generalisation on this issue. Our observation, however, must not be understood to mean that in all cases of assault suicide must follow....."

18. Therefore, having regard to the aforesaid discussion and the matrimonial quarrel over the domestic work and the dominance by the in-laws even if a is assumed, would not support the prosecution case that it was of such a nature which could lead her to commit suicide. As discussed above, the suicide or tendency to commit suicide depends on various factors, including the sensitivity of the person. Therefore, the moot question is whether the reasons arrived at for the findings and the conclusion can be said to be termed as perverse, which would call for any interference in the present appeal.

19. The Hon'ble Apex Court has laid down the broad guidelines with regard to scope of acquittal appeals in catena of judicial pronouncements. A useful reference can be made to the judgment of the Hon'ble Apex Court reported in case of Chandrappa v. State of Karnataka (supra). The broad guidelines have been laid down, which clearly referred to the relevant factors, which are required to be considered and the approach depending upon the facts of the case. It has

been specifically observed with regard to the relevant factors which are required to be considered for reversing the order of acquittal.

20. Therefore, in view of the aforesaid guidelines and scrutiny of material evidence, it cannot be said that the view taken by the Court below is perverse or erroneous. Therefore, since the view taken by the Court below is a plausible, this Court declines to interfere with the same.

21. In the circumstances, the appeal deserves to be dismissed and accordingly stands dismissed. Criminal Revision Application No. 272 of 2003 also stands disposed of in view of the aforesaid judgment.