

(2015) 09 GUJ CK 0071
In the Gujarat High Court
Case No : Criminal Appeal No. 1372 of 2006

State of Gujarat	Vs	APPELLANT
Meghji Virji Kharva and Others		RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 114, 306, 498(A), 498-A

Citation : (2015) 09 GUJ CK 0071

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : H.L. Jani, A.P.P., for the Appellant; A.J. Shastri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J—Present appeal is directed against the judgment and order rendered in Sessions Case No. 30 of 2000 by the learned Fast Track and learned Additional Sessions Judge, Porbandar dated 31.08.2005 recording acquittal of the accused for the offences punishable under Section 306, 498(A) and 114 of the Indian Penal Code, on the grounds stated in the judgment.

2. The facts of the case briefly summarized are as follow:

2.1. As it transpires from the material and evidence on record that the deceased daughter of the complainant had committed suicide by which the complaint being C.R. No. I-68 of 1999 was registered with "A" Division Police Station, Porbandar for the alleged offences under Section 306, 498(A) and 114 of the Indian Penal Code.

2.2. After investigation was over, the charge-sheet was filed and as he offence was triable by the court of Sessions, the case was committed to the Sessions Court.

Thereafter, learned Additional Sessions Judge, Porbandar framed the charges for

the offences under Sections 306 and 498(A) read with 114 of the IPC and proceeded with the trial.

In order to bring home the charges levelled against the respondent-accused, the prosecution examined the witnesses including the complainant victim and also produced documentary evidence which shall be referred to in the judgment hereinafter.

2.3. After recording the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Porbandar recorded the further statement of the accused under Section 313 of Code of Criminal Procedure.

2.4. After hearing the learned Advocate APP as well as the learned Advocate for the accused, the learned Additional Sessions Judge, Porbandar recorded the acquittal of the accused.

3. It is this judgment and order which has been assailed on the grounds stated in detail in the memo of appeal, inter alia, that the learned Additional Sessions Judge, Porbandar has committed error in appreciation of evidence of the complainant with regard to harassment and cruelty.

4. Heard learned APP Shri H.L. Jani for the applicant-State and learned Advocate Shri A.J. Shastri for the Respondents.

5. Learned APP Shri H.L. Jani referred to the testimony of the witness and submitted that deceased committed suicide and set her ablaze as there was harassment caused to her. He submitted that she was not having any issue for which she was abused and therefore she committed suicide. Learned APP has referred to the testimony of the witnesses including the complainant father (P.W. No. 8 at Exh. 19) and mother (P.W. No. 2 at Exh. 12). He submitted that the Court below has failed to appreciate the evidence in its proper prospective and therefore, present appeal may be allowed.

6. Learned Advocate Shri A.J. Shastri for the respondents has referred to the material and evidence including the testimony of the father (P.W. No. 8 at Exh. 19) and submitted that in the cross-examination he has stated that the deceased has complained to him about any harassment when she visited the parental house. He has also submitted that Rs. 5,000/- was taken by the son-in-law and was returned and this aspect has not been stated. He therefore referred to the improvisation which has been admitted in the cross-examination. He has also referred to the testimony of the P.W. No. 2 at Exh. 12 and submitted that she has also stated about harassment as she was not having any issue. However, in the cross-examination she has specifically admitted that wherever she was returned to her parental home, she has not stated about any harassment caused to her and further it is not stated about setting her fire in her statement before the police. He therefore submitted that considering the scope of the acquittal appeals, the findings recording acquittal may not be disturbed.

7. In view of the rival submissions and having perused the material and evidence

including the testimony of the witnesses as referred to by both the sides including the testimony of the father (P.W. No. 8 at Exh. 19) and mother (P.W. No. 2 at Exh. 12) and other evidence, it is evident that they have not stated about any harassment, as it has been admitted by them in the cross-examinations. Further, there is no demand for dowry and there was no other harassment. It is in this background, as she was not having issue even after about 7 to 8 years of marriage, may have led to such an incident of suicide. It is in these circumstances, the offence under section 498(A) cannot be said to have been proved or established. Section 498-A of the Indian Penal Code clearly provides that any willful conduct which is of such a nature as is likely to drive the woman to commit suicide. Further, the offence under section 306 of the Indian Penal Code, the necessary ingredients about the mens rea or the direct act which led to woman to commit suicide has to be proved or established. Therefore, on the basis of appreciation of evidence, the acquittal recorded by the Court below cannot be said to be erroneous much less perverse.

8. Further, the Hon''ble Apex Court in catena of judicial pronouncement has laid down the broad guidelines with regard to the scope of Section 378 of the acquittal appeals. The Hon''ble Apex Court in a judgment 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 , has laid down broad guidelines referring to the various aspects. Further, in another judgment the Hon''ble Apex Court 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 , reiterated the same guidelines, which has been observed referring to the scope of acquittal appeals under Section 378 of the Code of Criminal Procedure that if the view taken by the Court below is possible view, then the same cannot be disturbed merely because the other view is possible.

9. In the facts of the case as discussed herein above, on appreciation and scrutiny of evidence, the Court has recorded the reasons for the acquittal, which cannot be said to be erroneous. This Court is in complete agreement with the findings and conclusion arrived by the Court below on appreciation of material and evidence and it does not called for any interference in the present appeal.

10. Therefore, present appeal deserves to be dismissed and accordingly stands dismissed. Record and proceedings, be sent back to the Court below forthwith.