
(2010) 12 GUJ CK 0035
In the Gujarat High Court
Case No : Criminal Appeal No. 1129 of 1998

State of Gujarat	Vs	APPELLANT
Rafiqmiya Samsumiya Malek		RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377
Penal Code, 1860 (IPC) — Section 302, 306, 498A

Citation : (2010) 12 GUJ CK 0035

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : H.H. Parikh, Addl. Public Prosecutor, for the Appellant; Notice Served, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant-State of Gujarat has preferred this Appeal u/s 377 of the Code of Criminal Procedure, 1973 for enhancement of sentence passed by the learned Additional Sessions Judge, Nadiad dated 09th October 1998 passed in Sessions Case No. 54 of 1996, whereby the learned Judge has convicted the Respondent-original accused for the offence punishable u/s 498A and 306 of the Indian Penal Code.

2. It is the case of the original complainant that his sister get married with the Respondent-original accused about four years back. Her marriage was performed as per the customs prevailing in their caste. It is also the case of the complainant that about one or two years she was happily reside with her husband. Thereafter, as the brother-in-law of the present complainant was not working and often asked her wife to bring money from her parental house. It is also the case of the complainant that so as to see the marriage life of her sister, by giving understanding, they sent her to her matrimonial home. It is the case of the complainant that utensils given to her sister at the time of marriage were sold by his brother-in-law often asked her wife to bring money. It is also the case of the complainant that as per the say of her sister, her husband beaten oftentimes. It

is the case of the complainant that at 07:30 p.m. on the day on which complaint was filed, one person came and told that Imtiyazbanu, i.e. sister of the complainant, received burn injuries and was hospitalised at Kheda Civil Hospital. Therefore, the complainant along with his relatives went to Kheda Civil Hospital. At that time, her sister was died and her dead body was lying in the P.M. Room. She had received burn injuries all over the body. Therefore, a complaint to the effect that because of mental and physical torture advanced by her husband, she committed suicide, was filed with Matar Police Station.

3. Thereafter panchnama of offence was drawn by the Investigating Officer as also statements of witnesses were recorded by the Investigating Officer. Inquest panchnama was also drawn and thereafter the dead body was sent for postmortem. After investigation, as there was sufficient evidence against the present Respondent-accused, charge-sheet came to be filed against the present Respondent accused before the Judicial Magistrate First Class, Matar. As the case was exclusively triable by Sessions Court, the Judicial Magistrate First Class, Matar commit the case to the Sessions Court for adjudication, which was registered as Sessions Case No. 54 of 1996.

4. Thereafter charge was framed against the Respondent-accused below Exhibit 1 under Sections 498A and 302 of the Indian Penal Code, which was read over to him. The Respondent has denied the charge framed against him and claimed to be tried. Thereafter, the prosecution has produced oral as well as documentary evidence to prove their case. Thereafter, as the prosecution has filed closing pursis, further statement of the Respondent-accused was recorded u/s 313 of the Code of Criminal Procedure, in which the Respondent-original accused denies the charge levelled against him and contended that he is innocent and a false complaint is filed against him. Neither the complainant has examined any witness in support of his case nor examined himself on oath.

5. Thereafter trial was conducted before the learned Additional Sessions Judge, Nadiad. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence in support of the case. After hearing both the sides, the learned Additional Sessions Judge, Nadiad, by his judgment and order dated 09th October 1998 was pleased to convict the Respondent-accused under Sections 498A of the Indian Penal Code and ordered to undergo rigorous imprisonment for a period of two years and also awarded fine amount of Rs. 05,000/-, and in default of payment of fine, ordered to undergo rigorous imprisonment for a further period of three months. The learned Judge has also convicted the Respondent-original accused u/s 306 of the Indian Penal Code and ordered to undergo rigorous imprisonment for a period of three years and also awarded fine of Rs. 10,000/-, and in default of payment of fine, ordered to undergo rigorous imprisonment for a further period of six months. However, it is clarified that both the sentences shall run concurrently.

6. Being aggrieved by and dissatisfied with the said judgment and order dated 09th October 1998 passed by the learned Additional Sessions Judge, Nadiad, in

Sessions Case No. 54 of 1996, the Appellant-State of Gujarat has preferred the above mentioned Criminal Appeal for enhancement of sentence before this Hon"ble Court.

7. Heard Mr. H.H. Parikh, learned Additional Public Prosecutor, appearing on behalf of the Appellant-State. I have also gone through the papers and the judgment and order passed by the trial Court.

8. Mr.H.H. Parikh, learned Additional Public Prosecutor, has contended that the order passed by the learned Judge is not legal and proper. The learned Judge has imposed lesser punishment. He has contended that looking to the provision of Sections 498A and 306 of the Indian Penal Code, harsh conviction is required to be imposed upon the Respondent-accused. He has also contended that the learned Judge has committed error in not inflicting proper sentence. He, therefore, contended that the judgment and order dated 09th October 1998 passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 54 of 1996 is required to be enhanced by this Court in the interest of justice.

9. I have gone through the judgment and order passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions advanced by learned Counsel.

10 .From the perusal of the papers it appears that the learned Judge has appreciated all the evidence produced before him. Even the learned Judge has appreciated the facts of the case. The learned Judge has passed the order after appreciating oral as well as documentary evidence. Hence, I am of the opinion that the order of conviction passed by the learned Judge is just and proper.

11. Even it appears from the papers that the judgment and order of conviction was passed on 09th October 1998 and the appeal was preferred in the year 1998 and today, in the month of December, 2010, appeal for enhancement of the sentence imposed upon the Respondent-accused came up for hearing before this Court.

12. In that view of the matter also, it will not be appropriate to entertain the present appeal after a period of more than 12 years. Hence, I am in complete agreement with the findings, ultimate conclusion and the resultant order of conviction recorded by the trial Court and find no reason to interfere with the same. Hence, the present appeal is required to be dismissed and is hereby dismissed. The judgment and order of conviction dated 09th October 1998 passed by the learned Additional Sessions Judge, Nadiad, in Sessions Case No. 54 of 1996 is hereby confirmed. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith.