
(2012) 06 GUJ CK 0060
In the Gujarat High Court
Case No : Criminal Appeal No. 734 of 1995

State of Gujarat

APPELLANT

Vs

Rajubhai Nathaubhai Barapatra

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

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

Citation : (2012) 06 GUJ CK 0060

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

Bench : Single Bench

Advocate : Jirga Jhaveri app, for the Appellant; Notice Served, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Z.K. Saiyed

1. Though served, but nobody is appeared on behalf of the respondent. Therefore, the Appeal is taken up for final hearing on today. The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 7.3.1995 passed by the learned Sessions Judge, Ahmedabad City, in Sessions Case No.383 of 1991, whereby the accused has been acquitted from the charges leveled against him.

2. The brief facts of the prosecution case are as under:

3.1 The deceased Nalini was married with the accused about four years ago from the date of incident, as per the Hindu Rites and Customs. After marriage, the accused and his wife Nalini were residing with the parents of the accused at Maninagar, but after two months, the accused and his wife started residing separately in other rented premises at Bapunagar. The wife of the accused Nalini gave birth to one female child namely Nayna Alias Nehal. As per the case of prosecution, whenever his daughter Nalini visited at her parental house, she

used to complain about physical assault and mental torture by her husband. On every occasion, the complainant used to persuade and send her back with the hope that some improvement will take place in future. But the accused continued to caused such harassment to the deceased. The accused was not giving money to his wife Nalini and therefore, Nalini used to demand money from her father - complainant for maintaining herself and for household. As alleged in the complaint, a day before the incident, Nalini visited the complainant and told him that the accused had some illicit relationship with some other girl, and therefore, the accused was physically assaulting her by saying that she was not liked by accused. As alleged, on 12.6.1991 at about 6:00 p.m., the complainant was informed by the neighbour of the accused that Nalini had received burn injuries by catching fire. The complainant and his wife went to the house of Nalini, but the daughter Nalini was admitted in Shardaben Municipal General Hospital for medical treatment. Therefore, the complainant and his wife went to the said Hospital and they met their daughter. At that time, Nalini is alleged to have told her father that there was some quarrel between her and her husband. As per the complainant, his daughter Nalini was preparing tea on a stove at that time, the accused had thrown pincer on stove, which resulted into small blast and thereby his daughter received burn injuries and ultimately, she died on 15.6.1991 at about 8:40 p.m.

3.2 Therefore, a complaint with respect to the offence punishable under Sections 306 and 498-A of the Indian Penal Code was lodged against the accused. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, respondent was arrested and, ultimately, chargesheet was filed against him before the court of learned Chief Metropolitan Magistrate, Ahmedabad. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, which was numbered as Sessions Case No.383 of 1991. The trial was initiated against the respondent - accused.

3.3 To prove the case against the present accused, the prosecution has examined, in all 9 witnesses and also produced several documentary evidence.

3.4 At the end of trial, after recording the statement of the accused u/s 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him by judgment and order dated 7.3.1995.

3. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant State has preferred the present appeal.

4. It is submitted by learned APP that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients

of the evidence against the present respondent. Learned APP has also taken this court through the oral as well as the entire documentary evidence. Learned APP Ms. Jhaveri for the appellant - State read the charge at Exhibit 1 and submitted that from the charges levelled against the accused, the case is proved against the accused by the prosecution beyond reasonable doubt. She also submitted that from the bare reading of the complaint, it is proved that the accused is abettor or instigator. She read the evidence of P.W.1 - Ramdas Kisandas and submitted that from evidence of the complainant, it is established that the deceased Nalini complained to the complainant about the harassment caused by the accused. The accused had illicit relation with some other girl and this witness stated in evidence that Nalini was burnt by the accused. This witness also admitted the contents made in the complaint in his oral evidence. Learned APP read the evidence of P.W.2 Dr. Vimal Goswami at Exhibit 14, who had carried out Postmortem of the deceased and looking to the nature of the injuries, it can be said that the accused had played active role in the commission of the offence, as a result of which, the deceased committed suicide. She also submitted that during the trial, no independent witness was examined to support the case of defence. The accused was addicted of wine and gambling and therefore, he used to beat the deceased. She further submitted that the accused had illicit relation with other lady. As per her submission, learned trial Judge has not properly appreciated the evidence on record and acquitted the accused from the charges levelled against him. Therefore, the judgment and order passed by the learned trial Judge is required to be quashed and set aside by allowing the present Appeal.

5. I have perused the record and considered the submissions made by the parties. First of all, I have perused the dying declaration at Exhibit 21, which clearly reflects about the role of the accused. She herself rushed to the stove and thereby, she received burn injuries over her body. The complaint lodged by complainant, was after two days i.e. on 17.6.1991, whereas the deceased died on 15.6.1991 and the incident occurred on 12.6.1991. Therefore, it creates doubt to believe the case of the prosecution. I have perused the evidence produced on record and the prosecution is unable to prove the ingredients of Section 306 of the Indian Penal Code. The attempt on the part of the accused in the commission of the suicide by the deceased, is not proved even from the dying declaration. Learned Sessions Judge has rightly observed that when a person dies of burn injuries, it can be under three circumstances, (1) by accident, (2) homicide and (3) Suicidal. In order to bring the prosecution case within the ambit of Section 306, the prosecution must prove that the burn injuries were in the nature of suicidal and suicidal attempt must be owing to instigation by the accused. Even from the evidence of Kokilaben, mother of the deceased and complainant, nothing is come out against the accused establishing that the accused had instigated the deceased to commit suicide. Even the statement of the deceased was recorded vide Exhibit 32, but nothing about cruelty is come out and she herself stated that out of anger, she threw a pincer at the stove,

resulting into minor blast and sustained burn injuries. Learned Sessions Judge has rightly appreciated the evidence on record and rightly acquitted the accused.

6. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of Chandrappa and Others Vs. State of Karnataka, the Apex Court laid down the following principles:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

[4] An appellate court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

8. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

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 made by learned APP for the appellant-State. Thus, from the evidence itself, it is established that the prosecution has not proved its case beyond reasonable doubt.

10. Learned APP is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

11. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

12. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. Bail bond, if any, stands cancelled. Record and proceedings to be sent back to trial Court, forthwith.