

(2012) 12 GUJ CK 0069
In the Gujarat High Court
Case No : Criminal Appeal No. 696 of 1994

State of Gujarat

APPELLANT

Vs

Ramanlal Ramesh Bhai Dahyalal and Another

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 114, 306, 309, 498A

Citation : (2012) 12 GUJ CK 0069

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : K.P. Raval, app, for the Appellant; H.D. Chudasama, Advocate for the Respondent No. 2 and Mr. M.J. Buddhbhatti, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Ms. Justice Harsha Devani

1. This appeal is directed against the judgement and order of acquittal dated 29th April, 1994 passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No. 111 of 1989 whereby, the respondents have been acquitted of the charges levelled against them under the provisions of sections 498-A, 306 and 114 of the Indian Penal Code. The charge against the respondents was to the effect that the accused No. 1 and accused No. 2 are the brother-in-law and sister-in-law of deceased Madhuben and as such, they are relatives of Madhuben's husband. The accused were time and again quarrelling with the deceased in relation to household things and were, accordingly, subjecting her to harassment. By doing so, the accused have committed the offence u/s 498A read with section 114 of the Indian Penal Code. Moreover, the accused No.1 on account of instigation on the part of the accused No. 2 had, on 8th April, 1989 at one o'clock in the afternoon, gone to the house of Madhuben, at Bhavnagar and quarrelled with her and had alleged that she was a prostitute. Madhuben could not tolerate the harassment meted out to her and was instigated to commit

suicide. She, therefore, sprinkled kerosene over her body and set herself to fire and committed suicide. By doing so, the accused have committed the offence punishable u/s 306 read with section 114 of the Indian Penal Code.

2. The prosecution case is to the effect that one Velubha Bhikhubha Zala, Head Constable, "C" Division Police Station, Bhavnagar had recorded a first information report at the instance of Madhuben Pravinbhai who had stated that she was residing with her husband, mother-in-law, brother-in-law and sister-in-law at the address stated in the first information report and was doing household work. Her marriage had taken place one year prior to the incident. On the day of the incident at one o'clock, she was at home. Her husband and mother-in-law had gone out. At that time, her brother-in-law Rameshbhai came to her house and fought with her and told her that she was a prostitute. Her sister in-law was at her own residence and her brother-in-law had thereafter gone back to his house and she had poured five litres of kerosene over her body and lighted a match stick and set herself to fire. When her body started burning, she started screaming due to which, her neighbours Lalitaben (Babubhai), Vinodbhai, etc. came to douse the flames. Together with them, her sister-in-law Ramaben had also come and she was immediately taken for treatment in a government car, and she was admitted to the Burns Ward. She was undergoing treatment and was fully conscious. There was no harassment from her husband and her mother-in-law and that she, her mother-in-law and her husband were living together peacefully. That her brother-in-law Rameshbhai was quarrelling with her since the last two days and her sister-in-law was filling his ears with falsehood due to which her brother-in-law Rameshbhai had come in the afternoon and quarrelled with her and called her a prostitute which she had taken to heart, hence, she had sprinkled kerosene on herself and had sustained burns right from her head to her ankles. That both her eyes and hair had also got burnt. She has further stated that her brother-in-law and sister-in-law were residing separately since the last one month within the same compound and that her brother-in-law had fought with her and had returned to his house.

3. Thereafter, the first information report came to be registered as Bhavnagar "C" Division Police Station I-C.R. No. 58/1989. The dying declaration of the deceased came to be recorded by the Executive Magistrate. Madhuben expired on 8th April, 1989 at 19.00 hours after which the inquest panchnama came to be drawn and the dead body was sent for post mortem. Upon conclusion of the investigation, a charge-sheet came to be submitted against the accused for the offences punishable under sections 498A, 306 and 114 of the Indian Penal Code before the learned Chief Judicial Magistrate, Bhavnagar and came to be registered [as Criminal Case No. 1805 of 1989. The case was thereafter committed to the Sessions Court where it was registered as Sessions Case No. 111 of 1989. During the course of trial, the prosecution examined in all eight witnesses and led other documentary evidence. Upon conclusion of the trial, the learned Additional Sessions Judge held that the prosecution has not established its case beyond reasonable doubt and acquitted the respondents of the charges

levelled against them.

4. Mr. K.P. Raval, learned Additional Public Prosecutor took the court through the record and proceedings of the case and more particularly to the depositions of Kantilal Jivrajbhai Nandoliya, Medical Officer (exhibit-18), who examined the deceased when she was brought to the hospital; Pramodrai Manishanker Pathak, Executive Magistrate (exhibit-21), who had recorded the dying declaration of the deceased; Nanjibhai Premjibhai (exhibit-25), father of the deceased and Harisingbhai Kharchiyabhai Rathwa, the Investigating Officer (exhibit-32). It was submitted that two dying declarations had been recorded by two independent witnesses, namely, the concerned Police Officer who had recorded the first information report as well as the Executive Magistrate.

5. Referring to the deposition of Velubha Bhikhubha Zala (exhibit-29), it was pointed out that the said witness has duly proved the dying declaration and as such, there is no reason to believe that the same was not recorded properly. Referring to the deposition of the Executive Magistrate, it was pointed out that before recording the dying declaration, he had obtained an endorsement of the doctor who was present there, regarding the patient being conscious and had thereafter recorded the dying declaration. Reference was made to the deposition of Nanjibhai Premjibhai, father of the deceased wherein he has stated that when he went to visit his daughter in the Burns Ward of the hospital, she had stated that her brother-in-law had used bad words against her and called her a prostitute and told her that she was engaged in such cheap activities, hence, she has taken the same to her heart and sprinkled kerosene on herself and taken this extreme step. It was further pointed out that the said witness has produced on record a letter written by the deceased to him wherein she had stated that her brother-in-law and sister-in-law were quarrelling with her in connection with one pair of scissors which was missing and had beseeched him to bring a pair of scissors with him when he comes to visit her. It was submitted that the harassment meted out by the respondents was to such a great extent that the deceased was compelled to write such a letter to her father to get her a pair of scissors. It was submitted that on a conjoint reading of the dying declaration recorded by the Executive Magistrate, the first information report recorded by the concerned police officer and the deposition of the father, which is in the nature of the oral dying declaration, it is amply clear that the prosecution has duly proved the dying declaration made by the deceased. Thus, the allegations made in the first information report and what is stated by the father of the deceased are sufficient to establish that it was at the instigation of the accused that the deceased had committed suicide. Thus, the respondents were guilty of abetment in respect of the offence u/s 306 IPC and that the learned Judge was not justified in holding that no offence as alleged was made out. It was submitted that the deceased has also stated that both the respondents were time and again quarrelling with her and subjecting her to harassment. That since the respondents are relatives of her husband, the provisions of section 498A IPC would be squarely attracted. Under the circumstances, the impugned judgement

and order passed by the learned Additional Sessions Judge deserves to be quashed and set aside and the respondents are required to be convicted for the alleged offences.

6. Vehemently opposing the appeal, Mr. M.J. Buddhbhatti, learned counsel for the respondent No. 1 and Mr. H.D. Chudasama, learned counsel for the respondent No. 2 drew the attention of the court to the deposition of the Medical Officer, to point out that when he had deposed before the court, he did not remember any facts regarding the incident and the treatment which was given to the deceased. It was pointed out that the doctor had not brought along with him papers of the treatment given to the deceased. Referring to the cross-examination of the said witness, it was pointed out that the said witness did not even remember as to whether or not he had given any treatment to the deceased despite which, he had deposed that he had endorsed the dying declaration recorded by the Executive Magistrate to the effect that the deceased was in a conscious state of mind and was in a position to speak properly. It was further pointed out that in his cross-examination, it has been revealed that he was not aware whether any injection had been given to the deceased. It was submitted that considering the contents of the deposition of the medical officer, it is apparent that the prosecution has not been able to establish that the deceased was in a conscious state of mind at the time when the dying declaration was recorded. Referring to the deposition of the Executive Magistrate, it was pointed out that though he has stated that he had put questions to the deceased who had given answers, he has not recorded the dying declaration in the question-answer form, but had collated all the answers together and put them as a single answer. Referring to the deposition of the Executive Magistrate, it was pointed out that the deceased sustained severe burns all over her body and on her lips also, hence, she was not in a position to speak properly. Attention was also invited to the deposition of Induben Nanubhai (exhibit-28), who is the sister of the deceased and who has been declared to be hostile to the prosecution case, to submit that the said witness has deposed to the effect that when she went to the hospital, Madhuben was lying there and she was not speaking and that when she was asked as to what had happened, she did not say anything. That there was no harassment to the deceased by her brother-in-law and sister-in-law. It was submitted that though the deceased had no grievance against her husband and mother-in-law and had committed suicide at her matrimonial home, no witnesses from her husband's side have been examined, neither have the neighbours who had brought the deceased to the hospital been examined. Under the circumstances, there is no evidence of any independent witness brought on record by the prosecution.

7. It was further pointed out that assuming without admitting that the first information report and the dying declaration have been recorded at the instance of the deceased, even then on the allegations made therein, no offence u/s 498A or 306 IPC can be stated to have been made out. In support of such submission, the learned counsel placed upon a decision of this court in the case of Indrasing

M. Raol Vs. State of Gujarat, , for the proposition that a solitary incident cannot be interpreted as sufficient evidence of cruelty or harassment attracting section 498A because in that case, incessant, persistent and sufficiently grave cruelty as is likely to drive the woman to a point of desperation leaving her with no option except to think about suicide will be absent. In other words, a single incident will not incite a woman to commit suicide the improvident act, believing that life is now not worth living. Even if in some case it incites, the same will not attract section 498A as persistency or incessancy will be lacking. The section when envisages that cruelty or harassment must be unabated continuous or recurring and unbearable, one or two incidents casually taking place, may therefore, attract other penal provisions of the Indian Penal Code, but will not attract section 498A of the Indian Penal Code. Reliance was also placed upon the decisions of the Supreme Court in the case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, and in the case of M. Mohan Vs. The State represented by The Deputy Superintendent of Police, , reference to which shall be made at an appropriate stage. It was, accordingly, urged that the prosecution has failed to establish its case against the respondents and as such, the learned Additional Sessions Judge was justified in acquitting them of the charges alleged against them.

8. As can be seen from the facts and evidence noted hereinabove, the prosecution case is based upon two written and one oral dying declaration stated to have been made by the deceased. The first dying declaration is in the nature of a first information report which has been recorded by Velubha Bhikhubha Zala. A perusal of the deposition of the said witness reveals that prior to recording the first information report, he has not met any doctor nor had he any other talk with the deceased prior to recording of the first information report. He had taken down whatever was described by the deceased and had inquired the reason why she had sustained burns and had written down whatever was stated by the deceased. It has further come out in his cross-examination that the deceased was not speaking like a normal person. The second dying declaration has been recorded by Pramodrai Pathak, the Executive Magistrate who has deposed to the effect that he had gone to Sir T. Hospital, where he had met the doctor who had taken him to Cabin No. 4 of the Burns Ward, for recording the dying declaration of the deceased. The doctor had asked Madhuben as to how she was feeling and had put a few questions to her. The doctor had thereafter identified the deceased and had put his endorsement on the certificate and had thereafter left. That he had asked Madhuben about her name and other details, and asked what had happened to her, whereupon she had said that she was being harassed by her brother-in-law and sister-in-law, hence, she had set herself on fire. Upon asking as to who was harassing her, she had said that her brother-in-law was harassing her. In his cross-examination, it was revealed that when he went to record the dying declaration along with the doctor, the doctor went straight to the patient and did not check the register or papers. That the doctor had not made any physical examination of the deceased and had put a few questions to her for the

purpose of deciding whether she was mentally fit. The doctor had put her one or two questions, like, how she was feeling, in response to which the patient had replied and said "yes". Other than that, the doctor had not asked anything. That the doctor had not put any question as to whether the patient was in a fit state of mind to give replies.

9. From the depositions of the above two witnesses, insofar as recording of the first information report is concerned, it is apparent that the concerned police officer had neither obtained any endorsement from the doctor, nor had he taken any opinion of the doctor as to whether or not the deceased was in fit state of mind. Insofar as the dying declaration recorded by the Executive Magistrate is concerned, the doctor has made an endorsement that she was in conscious state of mind. However, from the cross-examination of the Executive Magistrate, it is apparent that he has not properly examined the patient prior to making such endorsement and has given such certification on the basis of one or two short questions put to her. Besides, from the deposition of the said Medical Officer, it is apparent that he does not remember any facts regarding the treatment given to the patient, etc. Under the circumstances, it is not possible to state that the prosecution has proved the contents of the dying declarations beyond reasonable doubt.

10. Apart from the aforesaid, assuming for the sake of argument that the prosecution has duly proved the contents of the dying declarations, even then what is required to be examined is as to whether on the basis of the allegations made in the dying declaration, the offences under sections 498A and 306 IPC can be stated to have been constituted.

11. At this stage, reference may be made to the decision of this court in the case of *Indrasing M. Raol v. State of Gujarat* (supra), wherein it has been held thus :

16. Even if it is believed for a while that the solitary incident as alleged did happen about 15 days prior to 7-3-1987, the day on which Kailasba committed suicide, the prosecution cannot succeed. It may be recollected that according to the prosecution, the appellant by force took Kailasba out and behaved roughly with her by giving kick and fist blows when Kailasba refused to go with him. Whether such solitary incident can be considered to be the cruelty or harassment envisaged by Section 498-A of Indian Penal Code is the question posed for consideration. As made clear, hereinabove, every act of cruelty or harassment is not made a crime u/s 498-A. The prosecution has to, as made clear hereinabove, establish that the cruelty or harassment was unabated, incessant & persistent and being grave in nature unbearable; and the same was with the intention to force the woman to commit suicide or to fulfill illegal demand or dowry of the husband or her in-laws. At this stage, reference of two decisions may be made. The High Court of Bombay has also taken the same view in the case of *Smt. Sarla Prabhakar Waghmare Vs. State of Maharashtra and others*, observing that every harassment or every type of cruelty would not attract Section 498-A. It must be established that beating and harassments was with a view to force the

wife to commit suicide or fulfill illegal demands of husband or her in-laws. The Supreme Court has also taken the same view in the case of *State of Maharashtra Vs. Ashok Chotelal Shukla*, observing that the prosecution has to establish that the accused committed acts of harassment or cruelty as contemplated by Section 498-A, and such harassment or cruelty must be the cause forcing the wife to commit the suicide. What can be deduced from these authorities is that a solitary incident cannot be interpreted to be the sufficient evidence of cruelty or harassment attracting Section 498-A because in that case, incessant persistent and sufficiently grave cruelty as is likely to drive the woman to a point of desperation leaving her with no option except to think about suicide will be absent. In other words, a single incident will not incite a woman to commit suicide the improvident act, believing that life is now not worth living. Even if in some case it incites, the same will not attract Section 498-A as persistency or incessancy will be lacking. The section when envisages that cruelty or harassment must be unabated continuous or recurring & unbearable, one or two incidents casually taking place, may therefore, attract another penal provisions of I.P. Code, but will not attract Section 498-A of Indian Penal Code. What is further necessary may be elucidated.

12. Examining the facts of the case in the light of the above principles, the allegation is to the effect that on the day of the incident, the brother-in-law of the deceased had come to the house of the deceased and quarrelled with her and told her that she was a prostitute. Apart from the aforesaid incident, there are only general allegations to the effect that her sister-in-law and brother-in-law were time and again quarrelling with her. It is also pertinent to note that the accused had started residing separately from the deceased a month prior to the date of the incident and were, therefore, not residing with the deceased at any time proximate to the date of the incident. Hence, any other harassment that the deceased may have been subjected in all probabilities would not be proximate to the date of the incident. Moreover, there is nothing on record to show as to what was the nature of harassment caused to the deceased except for the fact that her brother-in-law and sister-in-law were fighting with her. Under the circumstances, as held by this court in the above referred decision, what is envisaged u/s 498A of the Indian Penal Code is that cruelty or harassment should be unabated, incessant and persistent and grave in nature. Such harassment should be unbearable and should be meted out with the intention to force the woman to commit suicide. Insofar as the facts of the present case are concerned, there is nothing on record to show that the cruelty or harassment alleged were unabated, incessant and persistent. Except for general allegations that the accused were time and again quarrelling with the deceased, there is no evidence worth the name to establish that the deceased was subjected to any kind of harassment or cruelty as envisaged under the said provision. Under the circumstances, the provisions of section 498-A IPC would clearly not be attracted in the present case.

13. As regards the offence u/s 306 IPC, reference may be made to the decision

of the Supreme Court in the case of *M. Mohan v. State* represented by the Deputy Superintendent of Police (*supra*), wherein it has been held thus:

37. We would like to deal with the concept of "abetment". Section 306 of the Code deals with "abetment of suicide" which reads as under:

306. Abetment of suicide-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

38. The word "suicide" in itself is nowhere defined in the 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.

39. In our country while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence u/s 309 of I.P.C.

40. "Abetment of a thing" has been defined u/s 107 of the Code. We deem it appropriate to reproduce section 107, which reads as under:

107. Abetment of a thing-A person abets the doing of a thing, who-

First-Instigates any person to do that thing; or

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with section 107 reads as under:

Explanation 2-Whoever, either prior to or at the time of the commission of an act does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act

41. Learned counsel also placed reliance on yet another judgment of this court in *Ramesh Kumar Vs. State of Chhattisgarh*, , in which a three-Judge Bench of this court had an occasion to deal with the case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. This Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads as under:

20. 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 that actual words must be used to that effect, or what constitutes instigation 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.

42. In the said case this court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema (appellant's wife therein) may necessarily be drawn.

43. In *State of West Bengal Vs. Orilal Jaiswal and another*, , this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

44. 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 word "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 others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances

45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

46. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person u/s 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

14. In the present case, considering the community to which the deceased and

the accused belong, such petulance, discord and differences would not normally be expected to induce a similarly circumstanced individual in the said society to commit suicide. It appears that the deceased was hyper-sensitive to ordinary petulance, discord and differences in domestic life, which is quite common to the society to which the victim belongs. The facts on record indicate that the sole ground on which the deceased was induced to take such extreme step was that there were quarrels between her and her sister-in-law and brother-in-law and on the day of incident, her brother-in-law had come to her house and quarreled with her and told her that she was a prostitute. It appears that what was stated by the accused No. 1 was in a fit of anger or emotion without knowing the consequences to actually follow. Under the circumstances, what was stated by the accused No.1 cannot be said to be in the nature of instigation so as to incite the deceased to commit suicide. It is common knowledge that in a joint family, instances of this kind are not uncommon. As held by the Supreme Court in the case of *M. Mohan v. State* represented by the Deputy Superintendent of Police (*supra*), human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. In the present case, though it is quite unfortunate that such an episode of suicide had taken place in the family, however, the fact remains that on the facts and circumstances of the case, it cannot be said that the respondents had intentionally aided the deceased in committing suicide. As held by the Supreme Court in the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, , the intention of the Legislature and the ratio of the cases decided by the Supreme Court are clear that in order to convict a person u/s 306 IPC, there has to be a clear mens rea to commit the offence. It also requires an overt act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide. In the facts and circumstances of the present case, it can in no manner be stated that the respondents committed any active act or direct act which led the deceased to commit suicide seeing no option. Under the circumstances, the ingredients of section 306 IPC are clearly not satisfied.

15. A perusal of the impugned judgment and order shows that the learned Additional Sessions Judge has given cogent, convincing and sufficient reasons for the purpose of arriving at the conclusion that the prosecution has not proved the charges levelled against the accused beyond reasonable doubt. This court is in complete agreement with the reasoning adopted by the learned Additional Sessions Judge and finds no reason to take a different view. In the light of the aforesaid discussion, it is apparent that the prosecution has not proved the charges levelled against the accused beyond reasonable doubt and as such, there is no legal infirmity in the impugned judgment and order passed by the learned Additional Sessions Judge warranting interference. The appeal, therefore fails and is, accordingly, dismissed.