

(2014) 05 GUJ CK 0004
In the Gujarat High Court
Case No : Criminal Appeal No. 435 of 2003

State of Gujarat		APPELLANT
	Vs	
Rameshbhai Bhagwanbhai Parmar		RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 107, 306, 378, 498A

Citation : (2014) 4 Crimes 230 : (2015) 1 DMC 38 : (2014) 2 GLR 1506

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P, Advocate for the Appellant; M.M. Tirmizi,
Advocate for the Respondent

Judgement

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Rajesh H Shukla, J.—The present Appeal is directed against the judgment and order passed in Sessions Case No. 313 of 2000 by the Additional Sessions Judge, Nadiad dated 4-1-2003 recording acquittal of the accused for the alleged offence under Secs. 306 and 498A of the Indian Penal Code. The facts of the case briefly summarised are as follows:

1.1. The deceased, sister of the complainant, was married to the respondent-accused and the span of marriage was year and half. It is the case of the prosecution that the deceased committed suicide and she succumbed to the death when she was taken to hospital, and therefore, the complaint for the alleged offences was lodged by the complainant-brother being C.R. No. 1-88 of 2000 with Virsad Police Station.

1.2. On the basis of the F.I.R., the investigation was made, which ultimately culminated into aforesaid Sessions Case No. 313 of 2000.

1.3. The Sessions Court proceeded with the trial and after hearing learned A.P.P. and learned Advocate for the defence on appreciation of material and evidence

recorded acquittal, which has led to the present appeal.

2. It is this judgment and order which has been assailed on the grounds mentioned in the memo of appeal.

3. Heard learned A.P.P. Ms. Monali Bhatt for the appellant-State and learned Advocate Shri M.M. Tirmizi for the respondent-accused.

4. Learned A.P.P. Ms. Bhatt referred to the testimony of the prosecution witnesses and submitted that the cause of death as it is evident from the post-mortem report and the testimony of Dr. Bapat, P.W. 1, Exh. 7, is due to poison. She also referred to the complaint at Exh. 11 and also testimony of the complainant-brother at Exh. 10. Learned A.P.P. Ms. Bhatt also referred to the evidence of other prosecution witnesses including the maternal aunt at Exh. 15. Learned A.P.P. Ms. Bhatt submitted that the prosecution witnesses have supported the prosecution case regarding the harassment and the ill-treatment amounting to cruelty. She submitted that due to such ill-treatment, the deceased was driven to commit suicide. Learned A.P.P. Ms. Bhatt referring to the testimony of the witnesses submitted that it is evident that as the respondent-husband was habituated to the drinking liquor and used to beat her, she was compelled to do domestic work and whenever she visited the parental house, she has complained about such ill-treatment. Learned A.P.P. Ms. Bhatt referred to the testimony of P.W. 4, Exh. 14 and submitted that as the second marriage was difficult according to the customs in the caste, the brother used to persuade her and send her back to matrimonial house. She pointedly referred to the testimony of the witnesses and submitted that the brother had brought her to parental house, where she lived for about a month. She submitted that when she stayed at parental house, she was not very much willing to go to the matrimonial house. Learned A.P.P. Ms. Bhatt submitted, that therefore, on one hand, there was harassment and ill-treatment amounting to cruelty and on the other hand, the brothers would bring her and persuade her to go again as second marriage was not permissible. It is in such circumstances, the deceased was driven to commit suicide, and therefore, it could be said to be a compelling circumstances and the judgment and order recording acquittal is erroneous in light of the provisions of Sec. 498A of the I.P. Code.

5. Learned A.P.P. Ms. Bhatt submitted that assuming that the ingredients for the offences under Sec. 306 of the I.P. Code regarding instigation etc. are not sufficiently established, the fact remains that she was not treated well by the respondent-husband. Therefore, learned A.P.P. Ms. Bhatt submitted that as the span of marriage life is only one and half year, the presumption would be attracted and burden would shift on the accused to discharge. She pointedly referred to the testimony of P.W. 5, Exh. 15 (Maternal aunt) and submitted that just previous day, harassment was caused to her. She referred to the testimony of this witness again to emphasis that the deceased was not having any support from her parental house, and therefore, in such circumstances, she has committed suicide, which would be sufficient to attract the offence under Sec.

498A of the I.P. Code.

6. Learned A.P.P. Ms. Bhatt submitted that the Court below has committed an error in making the observations that the witnesses are relatives and no independent witness has been examined. It was submitted that the testimony of such witnesses cannot be discarded. In support of her submission, she has referred to and relied upon the judgment of the Hon''ble Apex Court in case of Vajresh Venkatray Anvekar Vs. State of Karnataka, , which reads as under:

"Learned Sessions Judge has refused to rely upon the evidence of the parents, brother and brothers-in-law of Girija primarily on the ground that they are interested witnesses. We find this approach to be very unfortunate. When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. It is common knowledge that independent witnesses like servants or neighbours do not want to get involved. In fact, in this case, a maid employed in the house of the appellant who was examined by the prosecution turned hostile. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. Witnesses are prone to exaggeration. It is for the trained judicial mind to find out the truth. If the exaggeration is of such nature as to make the witness wholly unreliable, the Court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable."

7. Learned A.P.P. Ms. Bhatt submitted that though it is an acquittal appeal, to prevent the miscarriage of justice the appellate Court has all the powers to re-appreciate and reconsider the evidence. She, therefore, submitted that as the Court below has failed to consider the relevant aspect while appreciating the evidence, the present appeal may be allowed.

8. Learned Advocate, Shri Tirmizi referred to the testimony of the witnesses including the testimony of P.W. 5 (Maternal aunt), Exh. 15 and submitted that in the cross-examination, it has been admitted by the witnesses that in her statement before the Police, she has not stated about the incidents.

9. Learned Advocate, Shri Tirmizi submitted that there is a reference to one chit, which is said to have been sent through somebody but he has not been examined and there is no evidence. He also submitted that no independent witness has been examined and all the witnesses are the interested witnesses as they are related witnesses, and therefore, the Court below has rightly not relied upon such evidence. Learned Advocate, Shri Tirmizi submitted that there is improvisation in the testimony of the witnesses, and therefore, the impugned order recording acquittal is just and proper. He submitted that when two views are possible, the Court may not disturb the findings. In support of his submission, he referred to the observations made by the Hon''ble Apex Court in

case of Tota Singh and Another Vs. State of Punjab, , which reads as under:

"The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

10. Learned Advocate, Shri Tirmizi also referred to the judgment of in case of Syed Firozuddin Vs. The State of Rajasthan, .

11. In rejoinder, learned A.P.P. Ms. Bhatt reiterated the submissions with regard to the constant harassment and submitted that as could be seen from the testimony of the witnesses, the deceased was ill-treated and she has been complaining to the brother, however, as the second marriage was not permissible in the caste, the brother would persuade her to go back to her matrimonial house. Learned A.P.P. Ms. Bhatt referred to the testimony of maternal aunt, Exh. 15 and submitted that as stated by her, she was not even having satisfaction at the parental house, and therefore, when there is constant ill-treatment and harassment at the matrimonial house just within one and half year of marriage life, she was left with no option but to commit suicide. She, therefore, submitted that the circumstances were so created which led to commit suicide. Learned A.P.P. Ms. Bhatt submitted that even though it is an acquittal appeal, it is well settled by catena of judicial pronouncements that the appellate Court may re-appreciate and scrutinise the evidence to prevent the miscarriage of justice. In support of her submission, she has referred to and relied upon the judgment of the Hon"ble Apex Court in case of Chandrappa and Others Vs. State of Karnataka, and referred to the broad guidelines and submitted that the present appeal may be allowed.

12. In view of these rival submissions, it is required to be considered, whether the present appeal can be entertained or not and whether the impugned judgment and order could be sustained or not.

13. As it transpires from the testimony of the complainant-brother, P.W. 2 at Exh. 10, he has specifically stated that the respondent-husband was habituated in drinking and was not treating the deceased well. It is required to be mentioned that this witness is more candid and balanced as he has specifically stated that the in-laws were treating the deceased-sister properly. Therefore, the complainant-brother, P.W. 2 in his testimony at Exh. 10 has sufficiently corroborated his complaint at Exh. 11, which referred to the constant harassment

and the ill-treatment. He has also stated that on earlier occasions, the compromise was arrived at, and thereafter, on the assurance of the respondent-husband, the deceased was sent to her matrimonial house. It is also specifically stated in the complaint that on the date of raksha-bandhan when the deceased came, she has stated that still the harassment is continued. It is required to be mentioned that P.W. 4 (brother) in his testimony at Exh. 14 has stated that second marriage was not permissible in the caste, and therefore, in spite of the complaints by the deceased, they used to persuade her to go to her matrimonial house stating that everything will be alright. Again, the testimony of maternal aunt, P.W. 5 at Exh. 15 further corroborates the prosecution case on this aspect when they had just visited the deceased on the previous day and she was crying and she had desired to accompany the maternal aunt, but the accused did not allow her to go with the maternal aunt. Therefore if the evidence of this maternal aunt at Exh. 15 is considered as a whole, she has also denied the suggestion that in her statement before the police, she has not stated about this aspect that the deceased wanted to accompany and the maternal aunt had said yes but when she was getting ready, the respondent-accused did not allow her and prevented her from accompanying the maternal aunt. Therefore, the submissions made by learned Advocate, Shri Tirmizi on the aspect of some minor discrepancy as to whether the brother was informed by the maternal aunt when they reached to the house of the deceased, is not such a crucial or relevant, which could go to the root of the matter in light of the aforesaid evidence regarding the harassment and the ill-treatment.

14. It is in this background, the rival submissions and the testimony of the witnesses are required to be considered for the purpose of offence under Secs. 498A and 306 of the I.P. Code. Therefore, it is on appreciation of the aforesaid evidence and the rival submissions, it is clearly revealed that there was a constant harassment and ill-treatment. Therefore, the underlying object of the Legislature for enacting Sec. 498A of the I.P. Code is required to be considered. The provisions of Sec. 498A of the I.P. Code provide,--

"498A. Husband or relative of husband of a woman subjecting her to cruelty:- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

15. Word "cruelty" has been explained in the explanation to suggest when it could be termed as "cruelty". The provisions of Sec. 498A of the I.P. Code were introduced by Criminal Law (Second) Amendment Act, 1983 to meet a social demand to resolve the 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. Therefore, the provision is made that the Court may draw the presumption. However, before the presumption under Sec. 113A of the Evidence

Act could be drawn or attracted, following conditions have to be fulfilled:

- (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 subjected her to cruelty.

Therefore, it leaves the discretion with the Court to draw the presumption in a given set of circumstances and the evidence in each case. A useful reference can be made to a judgment of the Hon"ble Apex Court in case of Mohd. Hoshan and Another Vs. State of A.P., wherein the observations have been made with regard to the offence under Secs. 306 and 498A of the I.P. Code. Further, the Hon"ble Apex Court in a judgment in case of Ramesh Kumar Vs. State of Chhattisgarh, has made observations referring to Sec. 306 read with Sec. 107 of the I.P. Code and has also discussed about the abetment. It has been observed referring to Sec. 113A of the Evidence Act that the presumption as to the abetment of suicide by married women. It has been observed,--

"113A. Presumption as to abetment of suicide by a married woman:-When the question is whether the commission of suicide by a woman had been abetted by her or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation:-For the purpose of this Section, "cruelty" shall have the same meaning as in Sec. 498A of the Indian Penal Code.

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. The 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" (Emphasis Supplied). A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption."

16. In another judgment of the Hon"ble Apex Court in case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, , it has been 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 any strait-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances."

17. Therefore, it will have to be considered in background of the facts and circumstances in each case. Therefore, on scrutiny and appreciation of evidence in the present case, it is evident that there is a constant harassment and ill-treatment by the respondent-husband. He is habituated to drinking and used to beat her. It is also evident that whenever she would visit her parental house, she used to complain about such ill-treatment and harassment and even after the assurance given to the brother, same torture had continued. The testimony of the complainant-brother, P.W. 2 at Exh. 10 clearly establishes about this harassment, which is corroborated by the testimony of other brother, P.W. 4 at Exh. 14. Thus, when the deceased was in a circumstances, where on one hand, there was a constant harassment and ill-treatment and on the other hand, when she used to go to her parental house, she was persuaded to go back to her matrimonial house because second marriage was not permissible according to the custom. As a result thereof, perhaps she was not acceptable permanently at the parental house of the brother for various reasons. Further, in spite of her tolerance and persuasion, the situation did not improve. Therefore, it could certainly be said that the respondent-husband had created a compelling circumstances where she was driven to commit suicide as she had no other option. Therefore, having regard to the background of the legislative intention for bringing about the amendment in Sec. 498A of the I.P. Code and presumption under Sec. 113A of the Evidence Act, it enables the Courts to draw the presumption in such circumstances in the interest of justice as stated hereinabove. At the same time, before the presumption could be made, a word "caution" has been expressed. Further in the judgment of the Hon'ble Apex Court in case of Girdhar Shankar Tawade Vs. State of Maharashtra, , it has been observed 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 of the I.P. Code. The submission made by learned Advocate, Shri Tirmizi that no independent witnesses like neighbour have been examined and the witnesses who are examined are relatives, and therefore, their evidence has rightly not been accepted, is thoroughly misconceived. In fact, such an approach in discarding the evidence of the relevant witnesses would be counter-productive to the legislative

intention of Sec. 498A of the I.P. Code. In fact, the provisions have been introduced as stated above as social measure to meet with the situation where the married women were forced to commit suicide and there was some difficulty regarding the proof or the evidence. It has been specifically observed in the aforesaid judgment in case of Ramesh Kumar (supra) that such incriminating evidence would be usually available within the four corners of the matrimonial home, and therefore, it may not be possible for anyone outside the occupants of the house, therefore, the presumption under Sec. 113A of the Evidence Act is allowed depending upon the facts of the case. In other word, it is an enabling provision that the Court "may" draw presumption in a given circumstances in the interest of justice though it is not mandatory or statutory presumption. There is a well marked distinction between the statutory presumption where the Court is under an obligation to draw inference or presumption, whereas other presumption is permitted to be made to enable the Court to draw such presumption in the interest of justice.

18. A useful reference can be made to the judgment of the Hon''ble Apex Court in case of Vajresh Venkatray Anvekar (supra), wherein it has been observed,--

"If the exaggeration is of such nature as to make the witness wholly unreliable, the Court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable."

19. Therefore, having regard to the aforesaid circumstances, the impugned judgment and order cannot be sustained as it has misdirected in appreciation of evidence with the background of the facts of the statutory provision as discussed above. However, one more facet which has been emphasised with regard to the scope of acquittal appeals requires consideration. Learned Advocate, Shri Tirmizi has referred to the observations made by the Hon''ble Apex Court in case of Tota Singh (supra) as quoted hereinabove, for which, there cannot be any quarrel, however, on the basis of the recommendation of Law Commission, the appellate Courts were given powers to re-appreciate, reconsider and scrutinise the evidence in the interest of justice. The Hon''ble Apex Court in a judgment in case of Chandrappa (supra) has discussed at length on this aspect and it has been observed,--

"Bare reading of Sec. 378 of the present Code (Appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the Legislature on the powers of the appellate Court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal."

In this judgment, the Hon"ble Apex Court referring to various aspects also discussed about the factors, which are relevant as stated in Para. 20.

20. A useful reference can be made to the judgment of the Hon"ble Apex Court in case of Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , wherein it has been observed,--

"In law there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded, and indeed, it has a duty to scrutinise the probative material de novo, in-formed, however, by the weighty thought that the rebuttable innocence, attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher Court not to upset the holding without very convincing reasons and comprehensive consideration....."

21. Again, the observations have been made with regard to the striking balance between the individual liberty and interest of society or public interest and it has been observed and quoted,--

"For all these reasons it is true to say", with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....." - In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to, punish marginal innocents."

22. It is in this background, considering the broad guidelines laid down by the Hon"ble Apex Court in the aforesaid judgment and the relevant facts, the impugned order cannot be sustained recording acquittal, as otherwise it would amount to miscarriage of justice. Therefore, the present appeal deserves to be allowed.

23. In the circumstances, the present appeal is allowed and the impugned judgment and order passed in Sessions Case No. 313 of 2000 by the Additional Sessions Judge, Nadiad dated 4-1-2003 is hereby quashed and set aside. The respondent-accused is hereby held guilty for the offences under Secs. 306 and 498A of the Indian Penal Code.

FURTHER ORDER:

24. After the judgment was pronounced, I have heard learned Advocate, Shri Tirmizi for the respondent-accused and learned A.P.P. Ms. Monali Bhatt for the appellant-State.

25. Learned Advocate, Shri Tirmizi stated that the respondent-accused is a poor labourer.

26. Therefore, having regard to the facts and circumstances, the respondent-accused is ordered to undergo sentence of rigorous imprisonment for a period of

2 years and fine of Rs. 500/-, in default, to undergo sentence of simple imprisonment for a period of 3 months for the offence under Sec. 498A of the Indian Penal Code and also to undergo sentence of rigorous imprisonment for a period of 2 years and 6 months and fine of Rs. 500/-, in default, to undergo sentence of simple imprisonment for a period of 3 months for the offence under Sec. 306 of the Indian Penal Code. Both the sentences are ordered to run concurrently. Learned Advocate Shri Tirmizi has requested for stay of the operation of the order for 8 weeks to enable his client to approach the Hon''ble Apex Court. Therefore, the stay of the operation of the order is stayed for a period of 8 weeks.